

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

The State Grievance Procedure

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



SENATE DOCUMENT NO. 9

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**

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Report of the Joint Subcommittee Studying
The State Grievance Procedure
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

The following resolution, Senate Joint Resolution No. 45, agreed to during the 1988 General Assembly Session, requested that a joint subcommittee study the authority and role of the Director of the Department of Employee Relations Counselors in administering and enforcing the state grievance procedure in localities that have adopted its provisions and for employees of constitutional officers, local departments of social services and regional housing authorities in localities that have not accepted such employees in the grievance procedure of the locality.

SENATE JOINT RESOLUTION NO. 45

Establishing a joint subcommittee to study the state grievance procedure.

Agreed to by the Senate, March 11, 1988

Agreed to by the House of Delegates, March 9, 1988

WHEREAS, under § 2.1-114.5:1 of the Code of Virginia, the General Assembly has mandated that employees of constitutional officers, local departments of social services, and regional housing authorities shall have access to the state grievance procedure where such employees have not been accepted into the grievance procedure of a local governing body; and

WHEREAS, some employees of constitutional officers have not been accepted in the grievance procedure of a local governing body and therefore are included in the state grievance procedure; and

WHEREAS, under § 15.1-7.1 of the Code of Virginia, certain counties, cities and towns have elected to adopt the state grievance procedure for their employees; and

WHEREAS, for these governmental entities certain difficulties have arisen in applying and implementing the state grievance procedure; and

WHEREAS, with respect to the employees of these governmental entities the authority and role of the Director of the Department of Employee Relations Counselors is ambiguous as to ruling on grievability, directing full compliance with the provisions of the state grievance procedure, and otherwise assuring that the employees have full access to the state grievance procedure; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study the authority and role of the Director of the Department of Employee Relations Counselors in administering and enforcing the state grievance procedure in localities that have adopted its provisions and for employees of constitutional officers, local departments of social services, and regional housing authorities in localities that have exercised their option not to accept such employees into the grievance procedures of such local governments. The joint subcommittee shall be composed of three members of the Senate appointed by the Senate Committee on Privileges and Elections and four members of the House of Delegates appointed by the Speaker of the House.

The joint subcommittee shall complete its work in time to submit its recommendations to the 1989 General Assembly.

The indirect costs of this study are estimated to be \$13,045, the direct costs of this study shall not exceed \$6,300.

BACKGROUND

The state grievance procedure was established in the 1970's. A joint subcommittee study (Senate Document No. 23, 1978) led to the introduction and passage of legislation by the 1978 General Assembly which substantially modified the grievance procedure. Although there have been a number of statutory and policy modifications since 1978, the basic procedure has remained the same.

The Department of Employee Relations Counselors was created in 1978 as an independent state agency responsible for helping employees use the grievance procedure and for administering certain aspects of the state grievance procedure. Nonprobationary classified state employees subject to the Virginia Personnel Act are covered by the state grievance procedure, with some exceptions for certain appointed, managerial and other employees.

Section 2.1-114.5:1 broadly defines a grievance as a complaint or dispute by an employee relating to his employment and then lists specific actions which are grievable. Certain actions are nongrievable because they fall within management's exclusive right to manage the affairs and operations of state government.

The state grievance procedure consists of four steps: three management steps and a panel hearing. The employee may terminate the grievance at any one of the management steps if the dispute is resolved.

The first step consists of a meeting between the grievant and the grievant's immediate supervisor. At the second step the grievant meets with the next direct level of management and witnesses may be present. The third step is a meeting between the employee and the third level of management. Witnesses may be present and if the employee elects to have a representative attend management may also have a representative attend.

The final level is the panel hearing. The panel is composed of three members: one appointed by the grievant, one appointed by the agency and a third member selected by the other two members. In cases of termination of state employees the third panel member is appointed by the Director of the Department of Employee Relations Counselors from the list of administrative hearing officers maintained by the Supreme Court of Virginia. The decision of the panel is final and binding.

Policies established by the Department of Employee Relations Counselors place time limitations on each party's actions during each step of the procedure. If either party fails to comply with all substantial procedural requirements of the grievance procedure without just cause and does not correct the noncompliance within five work days after written notification by the other party, the grievable issue will be decided in favor of the other party. If either party fails to comply with all substantial procedural requirements at the panel hearing without just cause, the case will be decided in favor of the other party.

Virginia Code §§ 15.1-7.1 and 15.1-7.2 require localities with more than fifteen employees to establish a grievance procedure that "fully and closely" complies with the provisions of the state grievance procedure. Grievance procedures established by local governments must be submitted to the Director of the Department of Employee Relations Counselors for approval. If a local government fails to comply with the provisions of § 15.1-7.1 the state grievance procedure becomes applicable in the locality. Local governments may choose to adopt the state grievance procedure instead of developing their own. Most local governments have adopted their own grievance procedure; fewer than ten localities use the state grievance procedure.

Section 2.1-114.5:1 provides that employees of local social service departments and local social service boards, constitutional officers' employees and employees of regional housing authorities created pursuant to § 36-40 (if the authority has more than fifteen employees) shall be included in the state grievance procedure unless the authority and the local governing body agree to have the employees included in the locality's procedure. In the case of employees of regional housing authorities the employees may be accepted into the grievance procedure of any local governing body that contributes financially to the operation of the authority if agreed to by both the authority and the locality.

ISSUES IDENTIFIED FOR STUDY

As stated earlier, Senate Joint Resolution No. 45 directed the joint subcommittee to study the authority and role of the Director of the Department of Employee Relations Counselors in administering and enforcing the state grievance procedure in localities that have adopted its provisions and for employees of constitutional officers, departments of social services and regional housing authorities covered by the state grievance procedure. Many of these non-state employees who are covered by the state grievance procedure do not have access to an administrative body that can assure that the employees have access to the grievance procedure and that it will be properly applied. The Director of the Department of Employee Relations Counselors performs these functions for state employees. Some of these non-state but covered employees have asked the Department of Employee Relations Counselors for assistance in filing or pursuing a grievance. It is not clear whether the Director of the Department of Employee Relations Counselors has the authority or should assume responsibility for ensuring that the employees will have access to the grievance procedure and that it is properly applied.

Until recently, the Department of Employee Relations Counselors maintained that it had no statutory authority to rule on grievability or compliance issues with respect to these employees. In 1987 an interpretation was sought from the Office of the Attorney General. The reply (an interoffice memorandum dated July 7, 1987) advised that the Director of the Department of Employee

Relations Counselors does have the authority to render decisions regarding grievability and compliance with respect to these employees. The memorandum stated that there are legal arguments on both sides of the question and that the decision in favor of exercising the authority is based on policy considerations, primarily the potential injustice that might result if the authority to rule on grievability and compliance issues was not exercised. The memorandum stated that "it is reasonable to assume that the General Assembly intended that employees within the coverage of the procedure would have a fair method to resolve grievances." The memorandum noted that "there is no other mechanism in place whereby these employees will be assured that fair and consistent rulings, or, for that matter, any rulings at all, will be rendered on these subjects." Without a mechanism for obtaining rulings, employees are in effect foreclosed from exercising their grievance rights unless they obtain a court order requiring their employer to provide the rights to which they are entitled. The court process is intimidating and expensive for the employee and burdensome to the courts. Although the memorandum stated that the Director's authority to rule is implicit, it also stated that deference could be given to the administrative interpretation previously exercised.

Issues on which rulings need to be made fall into three categories: access, grievability and compliance. Access involves determining who has access to the procedure. Grievability involves a determination of whether the problem is grievable, whether it falls within the definition of a grievance or whether it is a management responsibility and therefore nongrievable. Compliance involves determining whether the procedures and time periods followed, the panel members appoint and the manner in which the panel hearing was conducted complied with statutory and policy requirements.

ACTIVITIES, FINDINGS, AND RECOMMENDATIONS

The joint subcommittee held three meetings. The Department of Employee Relations Counselors served as a resource to the subcommittee. The subcommittee heard from representatives of the Virginia State Sheriffs' Association, the Commonwealth Attorneys' Association, the Virginia Association of Local Elected Constitutional Officers and the State Department of Social Services and employees of local departments of social services. Numerous other individuals and entities were placed on the subcommittee's mailing list and received notification of and information about the subcommittee's meetings. Prior to the subcommittee's initial meeting, information regarding Senate Joint Resolution 45 and the scope of the subcommittee's study was mailed to all local departments of social service, constitutional officers, regional housing authorities and local governments. Recipients of this mailing were invited to have their names placed on the subcommittee's mailing list.

The Department of Employee Relations Counselors conducted a survey of all local departments of social service, constitutional officers, regional housing authorities and local governments to determine which entities use the state grievance procedure and which use a local grievance procedure, how many employees are covered by each type of procedure, who rules on grievability, access and compliance, how suitable the grievance procedure being used is perceived to be and the annual number of grievances. Approximately 1200 surveys were mailed out and the response rate was 50%. A compilation of the results is attached as Appendix A. The survey revealed that a number of employers surveyed were not aware of the statutory requirement that their employees be covered by either the state or a local grievance procedure.

The Director of the Department of Employee Relations Counselors held meetings with personnel officers and local government attorneys from various localities in the Commonwealth to obtain input on the issues being studied by the subcommittee and the information received was communicated to the subcommittee.

Based on the information received the subcommittee reviewed the grievance procedure requirements for each type of entity and evaluated whether the current requirements provide the most workable arrangement given the individual characteristics of the entity. A discussion of each entity follows.

Local departments of social service - Under current law employees of local social service departments and local social service boards are required to be covered by the state grievance procedure but may be accepted in a local governing body's grievance procedure at the discretion of the locality. The majority (73%) of local social service departments responding to the survey use the state grievance procedure, 24% use a local grievance procedure and 3% have no grievance procedure. Employees of local social service departments are very similar to state or local employees and there is a great deal of state involvement in local departments of social services. However, many local departments have a small number of employees and the three management steps are not workable. The State Board of Social Services has established a policy that local social service boards have authority to rule on grievability issues for employees of local departments of social service. This can create an awkward situation because in many cases it is the local social service board that makes the employment decisions which are at issue in the grievance.

The subcommittee decided to recommend allowing modification of the management steps of the procedure to accommodate offices with a small number of employees, subject to the approval of the Director of the Department of Employee Relations Counselors and to designate the Director of the Department of Employee Relations Counselors to rule on access, grievability and compliance for local departments that use the state grievance procedure. Access, grievability and compliance rulings will be made pursuant to the locality's procedure for departments that use a local governing body's procedure.

Constitutional officers - Under current law constitutional officers' employees are required to be covered either by the state grievance procedure or at the discretion of the local governing body, by the local governing body's grievance procedure.

The subcommittee found that a number of constitutional officers do not use the state or a local grievance procedure, either because they have not had occasion to do so or because they are not aware of the statutory requirement that a grievance procedure be available to their employees. The subcommittee also found that many constitutional officers employ only a small number of persons and that the three management steps required by the state grievance procedure are not appropriate for offices with a small number of employees. Deputized employees are not required to be covered by a grievance procedure, so this reduces the number of constitutional officers' employees covered by a procedure. The subcommittee determined that the current statutory arrangement is not suitable for constitutional officers and extensively discussed alternatives. The subcommittee discussed whether constitutional officers should be treated differently from other employers since they are elected officials whose careers may depend on the performance of their employees. Although state personnel policies give state employees a property right in their employment, constitutional officers' employees do not have a property right in their employment absent the grievance procedure.

There are 642 constitutional officers in Virginia and 312 responded to the survey conducted by the Department of Employee Relations Counselors. Seventy-nine percent of the respondents have fewer than 15 employees; 60% have fewer than 5 employees. Of the constitutional officers who responded to the survey, only 7 have 15 or more employees eligible to use the grievance procedure.

The Virginia Sheriffs' Association took the position that sheriffs should not be required to have a state-mandated grievance procedure for their employees. The Virginia Sheriffs' Association conducted a survey of all sheriffs in Virginia and the responses indicated that 71 of the 98 respondents do not use a grievance procedure for their nondeputized personnel. Ninety-three of the respondents felt that the state should not mandate a grievance procedure for sheriffs' employees.

The Commonwealth's Attorneys' Association took the position that Commonwealth's attorneys should not have to provide a grievance procedure for their employees. One of the reasons for this position is that most Commonwealth's attorneys are part time and many also engage in the private practice of law and may use the same support staff for both their public and private work. Most assistant Commonwealth's attorneys are deputies and are therefore excluded from the grievance procedure.

The survey conducted by the Department of Employee Relations Counselors indicated that 79% of the Commonwealth's attorneys responding have fewer than 5 employees and 93% have 20 or fewer employees. The Henrico Commonwealth's Attorneys' Office is one of the five largest offices in the state but has only eight employees eligible to use the grievance procedure.

The Virginia Association of Local Elected Constitutional Officers adopted a resolution asking the subcommittee not to change provisions of the current law relating to use of the grievance procedure by constitutional officers.

The subcommittee decided to remove the current requirement that constitutional officers' employees have access to the state or a local grievance procedure. The subcommittee decided that constitutional officers should not be required to provide a grievance procedure for their employees, but the employees should be allowed to be covered by the local governing body's procedure if the constitutional officer and the local governing body agree to have them included.

Housing authorities - The law currently requires employees of regional housing authorities created pursuant to § 36-40 to be included within the coverage of the state grievance procedure if the authority has more than 15 employees. However, the 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 locality.

Of the regional housing authorities that responded to the survey conducted by the Department of Employee Relations Counselors, 73% said that they are under neither the state nor a local grievance procedure. None are under the state procedure. Fifty-five percent report having their own procedure. Many are small offices; 4 of the 11 responding have fewer than 15 employees and 6 have fewer than 50 employees. Because of the small number of employees the three management steps required by the state procedure are not workable. It is not clear how many of the authorities that use their own procedure or do not have a procedure are exempt because they have fewer than 15 employees and how many are not following statutory requirements.

During the course of the subcommittee's study it was brought to its attention that redevelopment and housing authorities created pursuant to § 36-4 usually have more employees than regional housing authorities, but are not required to have a grievance procedure for their employees.

The subcommittee decided to recommend that regional housing authorities and redevelopment and housing authorities be permitted to adopt their own grievance procedures, to be reviewed and approved by the Director of the Department of Employee Relations Counselors, or that they be included in a locality's procedure if agreed to by the authority and the locality. The state grievance procedure would apply only to employees of authorities that do

not develop their own procedure or come under the procedure of a local governing body. The subcommittee decided to remove the provision that an authority have 15 employees before being required to have a grievance procedure because by excluding those with fewer than 15 employees very few regional housing authorities would be required to have a grievance procedure. The subcommittee decided to allow housing authorities that develop their own procedures to modify the management steps of the procedure, subject to approval by the Director of the Department of Employee Relations Counselors, to accommodate offices with a small number of employees. Procedures developed by housing authorities must contain a definition of grievance and be consistent with the provisions of the state grievance procedure, but housing authorities are not required to use an administrative hearing officer in employee termination cases. For housing authorities that use their own procedure, the commissioners of the authority (or their designees) are designated to determine issues of qualification for panel hearing and to make compliance determinations, subject to judicial review.

Local governing bodies - The subcommittee found that most local governments have their own grievance procedure which has been approved by the Director of the Department of Employee Relations Counselors. Localities have no office that performs functions equivalent to those performed by the Department of Employee Relations Counselors and local grievance procedures are not required to designate someone to rule on access, grievability or compliance. When approving local procedures the Director of the Department of Employee Relations Counselors suggests to the locality that it designate a neutral party outside the normal process of management to make these rulings. Most localities designate the city manager. The issues considered by the subcommittee were (i) who should rule in the five to ten localities that come under the state procedure and (ii) whether small localities should be allowed to modify the management steps of the procedure.

The subcommittee decided to recommend that the Director of the Department of Employee Relations Counselors be given the authority to rule on access, grievability and compliance for localities under the state procedure. The subcommittee determined that the Director of the Department of Employee Relations Counselors has inherent authority to allow modification of the management steps for localities and did not add a specific provision authorizing modification.

Community services boards - It was brought to the attention of the subcommittee that community service boards are similar to local social service boards but are not given the option of coming under the state grievance procedure. Virginia Code § 37.1-195 requires community services boards to have a grievance procedure. The subcommittee decided that community services boards should be treated like social service boards for the purposes of the grievance procedure and given the option of using either the state or a locality's grievance procedure. Community services boards will no longer be permitted to develop their own grievance procedure.

CONCLUSION

The subcommittee determined that a grievance procedure should be available to all employees required to be covered by a procedure and that there should be assurance that employees' procedural rights will be exercised in compliance with the law and in a fair and consistent manner and that the procedure used should be workable for the entity using it. The subcommittee proposed legislation that incorporates recommendations to accomplish this. The proposed legislation is attached as Appendix B. The proposed legislation contains other substantive and editorial changes. All changes are explained in Appendix C, entitled Explanation of Changes.

The Joint Subcommittee Studying the State Grievance Procedure recommends that the 1989 General Assembly adopt the proposed legislation.

Respectfully submitted,

Senator Elliot S. Schewel, Chairman

Delegate Ralph L. Axselle, Jr., Vice Chairman

Senator Wiley F. Mitchell, Jr.

Senator Joseph B. Benedetti

Delegate James F. Almand

Delegate Clifton A. Woodrum

Delegate Clinton Miller

APPENDICES

Name: Departments of Social Services

APPENDIX A

Total Number:	<u>124</u>	
Responses as of 7/25/88:	<u>89</u>	
Percentage of Total:	<u>72 %</u>	

Number of Employees:	<u>8,351</u>	
Number of Deputies:	<u>N/A</u>	
Percentage of Employees Deputized:	<u>N/A %</u>	

Number and Percentage Using:

A. State grievance procedure	<u>65</u>	<u>73 %</u>
B. Local grievance procedure	<u>21</u>	<u>24 %</u>
C. "Own" procedure	<u>0</u>	<u>- %</u>
D. No procedure	<u>3</u>	<u>3 %</u>

Who rules on grievability, access, compliance?

A. Director or Board	<u>58</u>	<u>65 %</u>
B. Local government official	<u>17</u>	<u>19 %</u>
C. N/A or other	<u>14</u>	<u>16 %</u>

How suitable is the grievance procedure being used?

A. Suitable	<u>61</u>	<u>69 %</u>
B. Not Suitable	<u>4</u>	<u>4 %</u>
C. N/A	<u>24</u>	<u>27 %</u>

Number of grievances annually for last 5 years (approximate):

66

Name: Regional Housing Authorities

Total Number: 28
Responses as of 7/25/88: 11
Percentage of Total: 39 %

Number of Employees: 248
Number of Deputies: N/A
Percentage of Employees Deputized: N/A %

Number and Percentage Using:

A. State grievance procedure	<u>0</u>	<u>- %</u>
B. Local grievance procedure	<u>3</u>	<u>27 %</u>
C. "Own" procedure	<u>6</u>	<u>55 %</u>
D. No procedure	<u>2</u>	<u>18 %</u>

Who rules on grievability, access, compliance?

A. Director	<u>10</u>	<u>91 %</u>
B. Local government official	<u>0</u>	<u>- %</u>
C. N/A	<u>1</u>	<u>9 %</u>

How suitable is the grievance procedure being used?

A. Suitable	<u>10</u>	<u>91 %</u>
B. Not Suitable	<u>1</u>	<u>9 %</u>
C. N/A	<u>0</u>	<u>- %</u>

Number of grievances annually for last 5 years (approximate): 14

Name: Local Governments

Total Number: 325
Responses as of 7/25/88: 108
Percentage of Total: 33 %

Number of Employees: 27,901
Number of Deputies: N/A
Percentage of Employees Deputized: N/A %

Number and Percentage Using:

A. State grievance procedure	<u>9</u>	<u>8 %</u>
B. Local grievance procedure	<u>76</u>	<u>70 %</u>
C. "Own" procedure	<u>-</u>	<u>- %</u>
D. No procedure	<u>23</u>	<u>21 %</u>

Who rules on grievability, access, compliance?

A. Constitutional officer	<u>N/A</u>	<u>N/A %</u>
B. Local government official	<u>92</u>	<u>85 %</u>
C. N/A	<u>16</u>	<u>15 %</u>

How suitable is the grievance procedure being used?

A. Suitable	<u>58</u>	<u>63 %</u>
B. Not Suitable	<u>3</u>	<u>7 %</u>
C. N/A	<u>32</u>	<u>30 %</u>

Number of grievances annually for last 5 years approximate: 140

Name: Commonwealth's Attorneys

Total Number: 121
Responses as of 7/25/88: 29
Percentage of Total: 24 %

Number of Employees: 151
Number of Deputies: 2
Percentage of Employees Deputized: 1 %

Number and Percentage Using:

A. State grievance procedure	<u>2</u>	<u>7 %</u>
B. Local grievance procedure	<u>5</u>	<u>17 %</u>
C. "Own" procedure	<u>1</u>	<u>3 %</u>
D. No procedure	<u>21</u>	<u>72 %</u>

Who rules on grievability, access,
compliance?

A. Constitutional officer	<u>10</u>	<u>34 %</u>
B. Local government official	<u>2</u>	<u>7 %</u>
C. N/A	<u>17</u>	<u>59 %</u>

How suitable is the grievance procedure
being used?

A. Suitable	<u>9</u>	<u>31 %</u>
B. Not Suitable	<u>4</u>	<u>14 %</u>
C. N/A	<u>16</u>	<u>55 %</u>

Number of grievances annually for last
5 years (approximate): 3

Name: Sheriffs

Total Number: 125
Responses as of 7/25/88: 62
Percentage of Total: 50 %

Number of Employees: 3104
Number of Deputies: 2669
Percentage of Employees Deputized: 86 %

Number and Percentage Using:

A. State grievance procedure	<u>7</u>	<u>11 %</u>
B. Local grievance procedure	<u>17</u>	<u>28 %</u>
C. "Own" procedure	<u>12</u>	<u>19 %</u>
D. No procedure	<u>26</u>	<u>42 %</u>

Who rules on grievability, access, compliance?

A. Constitutional officer	<u>37</u>	<u>60 %</u>
B. Local government official	<u>6</u>	<u>10 %</u>
C. N/A	<u>19</u>	<u>30 %</u>

How suitable is the grievance procedure being used?

A. Suitable	<u>35</u>	<u>57 %</u>
B. Not Suitable	<u>7</u>	<u>11 %</u>
C. N/A	<u>20</u>	<u>32 %</u>

Number of grievances annually for last 5 years (approximate): 11

Name: Clerks of Court

Total Number: 121
Responses as of 7/25/88: 72
Percentage of Total: 60 %

Number of Employees: 667
Number of Deputies: 490
Percentage of Employees Deputized: 73 %

Number and Percentage Using:

A. State grievance procedure	<u>13</u>	<u>18 %</u>
B. Local grievance procedure	<u>14</u>	<u>19 %</u>
C. "Own" procedure	<u>1</u>	<u>1 %</u>
D. No procedure	<u>44</u>	<u>61 %</u>

Who rules on grievability, access, compliance?

A. Constitutional officer	<u>21</u>	<u>29 %</u>
B. Local government official	<u>7</u>	<u>10 %</u>
C. N/A	<u>44</u>	<u>61 %</u>

How suitable is the grievance procedure being used?

A. Suitable	<u>16</u>	<u>22 %</u>
B. Not Suitable	<u>13</u>	<u>18 %</u>
C. N/A	<u>43</u>	<u>60 %</u>

Number of grievances annually for last 5 years (approximate): 0

Name: Commissioners of the Revenue

Total Number: 131
Responses as of 7/25/88: 81
Percentage of Total: 60 %

Number of Employees: 393
Number of Deputies: 130
Percentage of Employees Deputized: 33 %

Number and Percentage Using:

A. State grievance procedure	<u>17</u>	<u>21 %</u>
B. Local grievance procedure	<u>32</u>	<u>40 %</u>
C. "Own" procedure	<u>2</u>	<u>2 %</u>
D. No procedure	<u>30</u>	<u>37 %</u>

Who rules on grievability, access, compliance?

A. Constitutional officer	<u>37</u>	<u>46 %</u>
B. Local government official	<u>11</u>	<u>13 %</u>
C. N/A	<u>33</u>	<u>41 %</u>

How suitable is the grievance procedure being used?

A. Suitable	<u>40</u>	<u>49 %</u>
B. Not Suitable	<u>-</u>	<u>- %</u>
C. N/A	<u>41</u>	<u>51 %</u>

Number of grievances annually for last 5 years (approximate): 2

Name: **Treasurers**

Total Number: 137
Responses as of 7/25/88: 68
Percentage of Total: 50 %

Number of Employees: 358
Number of Deputies: 141
Percentage of Employees Deputized: 39 %

Number and Percentage Using:

A. State grievance procedure	<u>14</u>	<u>20 %</u>
B. Local grievance procedure	<u>29</u>	<u>43 %</u>
C. "Own" procedure	<u>-</u>	<u>- %</u>
D. No procedure	<u>25</u>	<u>37 %</u>

Who rules on grievability, access, compliance?

A. Constitutional officer	<u>29</u>	<u>43 %</u>
B. Local government official	<u>14</u>	<u>20 %</u>
C. N/A	<u>25</u>	<u>37 %</u>

How suitable is the grievance procedure being used?

A. Suitable	<u>27</u>	<u>40 %</u>
B. Not Suitable	<u>4</u>	<u>6 %</u>
C. N/A	<u>37</u>	<u>54 %</u>

Number of grievances annually for last 5 years (approximate): 1

1 RDF 10/28/88 Bolecek C 12/2/88 jds

APPENDIX B

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact §§ 2.1-114.5, 2.1-114.5:1, 2.1-114.5:6,
4 15.1-7.2 and 37.1-195 of the Code of Virginia, relating to
5 personnel administration and grievance procedures.

6

7 Be it enacted by the General Assembly of Virginia:

8 1. That §§ 2.1-114.5, 2.1-114.5:1, 2.1-114.5:6, 15.1-7.2 and 37.1-195
9 of the Code of Virginia are amended and reenacted as follows:

10 § 2.1-114.5. Duties of Department.--The Department shall have
11 the following duties:

12 1. Make recommendations to the Governor regarding the
13 establishment and maintenance of a classification plan for the service
14 of the Commonwealth, and recommend amendments thereto as may be
15 necessary.

16 2. Make recommendations to the Governor regarding the
17 establishment and administration of a compensation plan for all
18 employees, and recommend amendments thereto as may be necessary.

19 3. Design and maintain a personnel information system which shall
20 support the operational needs of the Department and of state agencies,
21 and which shall provide for the management information needs of the
22 Governor and his secretaries, and of the General Assembly. The system
23 shall provide at a minimum a roster of all employees in the service of
24 the Commonwealth, in which there shall be set forth as to each
25 employee, the employing agency, the class title, pay and status and
5 such other data as may be deemed desirable to produce significant

1 facts pertaining to personnel administration.

2 4. Establish and direct a program of employee-management
3 relations designed to improve communications between employees and
4 agencies of the Commonwealth.

5 5. Establish and administer a system of performance evaluation
6 for all employees in the service of the Commonwealth, based on the
7 quality of service rendered, related where practicable to specific
8 standards of performance.

9 6. Establish and administer a system of recruitment designed to
10 attract high quality employees to the service of the Commonwealth. In
11 administering this system, applicants shall be rated on the basis of
12 relative merit and classified in accordance with their suitability for
13 the various classes of positions in the service of the Commonwealth,
14 and a record thereof shall be maintained in the open register.

15 7. Design and utilize an application form which shall include,
16 but not be limited to, information on prior volunteer work performed
17 by the applicant.

18 8. Establish and administer a comprehensive and integrated
19 program of employee training and management development.

20 9. Establish and administer a program of evaluation of the
21 effectiveness of performance of the personnel activities of the
22 agencies of the Commonwealth.

23 10. Establish and administer a program to assure equal employment
24 opportunity to applicants for state employment and to state employees
25 in all incidents of employment.

26 11 Establish and administer regulations relating to disciplinary
27 actions. however, no disciplinary action shall include the suspension
28 without pay for more than ten days of any state employee who is una

1 investigation without a hearing conducted either by a level of
2 supervision above the employee's immediate supervisor or by his agency
3 head.

4 12. Adopt and implement a program of meritorious service awards
5 to employees who propose procedures or ideas which are adopted and
6 which will result in eliminating or reducing state expenditures or
7 improving operations; provided such proposals are placed in effect.

8 13. Develop state personnel policies, and after approval by the
9 Governor, disseminate and interpret state personnel policies and
10 procedures to all agencies. The Director of the Department of
11 Personnel and Training shall have the final authority to establish and
12 interpret personnel policies and procedures ; however, and shall have
13 the authority to assure full compliance with such policies. However,
14 unless specifically authorized by law, the Director of the Department
15 of Personnel and Training shall have no authority with respect to the
16 state grievance procedures.

17 § 2.1-114.5:1. Grievance procedure.--The Department of Employee
18 Relations Counselors shall establish a grievance procedure as part of
19 the state's program of employee-management relations. It shall be the
20 policy of the Commonwealth to encourage resolution of employee
21 problems and complaints wherein employees can freely discuss their
22 concerns with immediate supervisors and upper management levels.
23 However, to the extent such concerns cannot be resolved, the grievance
24 procedure shall afford an immediate and fair method for the resolution
25 of disputes which may arise between an agency and its employees. The
26 grievance procedure shall include:

27 A. Definition of grievance. - A grievance shall be a complaint or
28 dispute by an employee relating to his employment, including but not

1 necessarily limited to (i) disciplinary actions, including dismissals,
2 demotions and suspensions, provided that dismissals shall be grievable
3 whenever resulting from formal discipline or unsatisfactory job
4 performance; (ii) the application of personnel policies, procedures,
5 rules and regulations, including the application of policies involving
6 matters referred to in subdivision B (iii) below; (iii) acts of
7 reprisal as the result of utilization of the grievance procedure or of
8 participation in the grievance of another state employee; and (iv)
9 complaints of discrimination on the basis of race, color, creed,
10 political affiliation, age, ~~handicap~~ disability , national origin or
11 sex.

12 B. Management responsibilities. - Management reserves the
13 exclusive right to manage the affairs and operations of state
14 government. Accordingly, the following complaints are nongrievable:
15 (i) establishment and revision of wages or salaries, position
16 classifications or general benefits; (ii) work activity accepted by
17 the employee as a condition of employment or work activity which may
18 reasonably be expected to be a part of the job content; (iii) the
19 contents of ordinances, statutes or established personnel policies,
20 procedures, rules and regulations; (iv) failure to promote except
21 where the employee can show that established promotional policies or
22 procedures were not followed or applied fairly; (v) the methods, means
23 and personnel by which such work activities are to be carried on; (vi)
24 except where such action affects an employee who has been reinstated
25 within the previous six months as the result of the final
26 determination of a grievance, termination, layoff, demotion or
27 suspension from duties because of lack of work, reduction in work
28 force, or job abolition; (vii) the hiring, promotion, transfer,

1 assignment and retention of employees within the agency; and (viii)
 2 the relief of employees from duties of the agency in emergencies. In
 3 any grievance brought under the exception to (vi) of this ~~subdivision~~
 4 subsection , the action shall be upheld upon a showing by the agency
 5 that: (i) there was a valid business reason for the action, and (ii)
 6 the employee was notified of the reason in writing prior to the
 7 effective date of the action.

8 C. Coverage of personnel. - 1. All ~~permanent classified state~~
 9 ~~governmental personnel employees~~ , excluding probationary employees,
 10 are eligible to file grievances as provided in this chapter with the
 11 following exceptions:

12 ~~1.~~ a. Appointees of elected groups or individuals;

13 ~~2.~~ b. Agency heads or chief executive officers of government
 14 operations and institutions of higher education appointed by boards
 15 and commissions;

16 ~~3.~~ c. Law-enforcement officers as defined in Chapter 10.1 (§
 17 2.1-116.1 et seq.) of this title whose grievance is subject to the
 18 provisions of Chapter 10.1 of this title and who have elected to
 19 proceed pursuant to Chapter 10.1 of this title in the resolution of
 20 their grievance or any other employee electing to proceed pursuant to
 21 any other existing procedure in the resolution of his grievance; and

22 ~~4.~~ d. Employees in positions designated in subdivision (16) of
 23 § 2.1-116.

24 ~~Permanent classified employees of the Department of Mental~~
 25 ~~Health, Mental Retardation and Substance Abuse Services who are~~
 26 ~~terminated on the grounds of patient abuse, and permanent classified~~
 27 ~~employees of the Department of Corrections who work in institutions or~~
 28 ~~have client or inmate contact and who are terminated on the grounds of~~

1 a criminal conviction, or are terminated as a result of being placed
 2 on probation under the provisions of § 18-2-251, may appeal their
 3 termination through the grievance procedure only through the
 4 management steps. If resolution is not forthcoming by the conclusion
 5 of the last management step, the employee may advance the grievance to
 6 the circuit court of the jurisdiction in which the grievance occurred
 7 for a de novo hearing on the merits in lieu of a panel hearing. In its
 8 discretion, the court may refer the matter to a commissioner in
 9 chancery to take such evidence as may be proper and to make a report
 10 to the court. Both the grievant and the respondent may call upon
 11 appropriate witnesses and be represented by legal counsel or other
 12 representatives before the court or the commissioner in chancery. Such
 13 representatives may examine, cross-examine, question and present
 14 evidence on behalf of the grievant or respondent before the court or
 15 commissioner in chancery without being in violation of the provisions
 16 of § 54-44. A termination shall be upheld unless shown to have been
 17 unwarranted by the facts or contrary to law or written policy. The
 18 decision of the court shall be final and binding.

19 2. Employees of the entities listed below shall be subject to
 20 the following provisions:

21 a. Employees of local social service departments and local
 22 social service boards shall be included within the coverage of the
 23 state a grievance procedure , however, these . These employees may
 24 be accepted in a local governing body's grievance procedure at the
 25 discretion of if agreed to by the local governing body of the county,
 26 city or town and the department or board but shall be excluded from
 27 the locality's personnel system , or they shall be covered by the
 28 state grievance procedure . The Director of the Department of

1 Employee Relations Counselors may allow modifications to the
2 management steps of the state grievance procedure for local social
3 service departments and local social service boards.

4 b. Employees of community services boards shall be included
5 within the coverage of a grievance procedure. These employees may be
6 accepted in the grievance procedure of the local governing body that
7 established the community services board or in the grievance procedure
8 of any participating locality in the case of joint community services
9 boards, if agreed to by the local governing body and the community
10 services board, or they shall be covered by the state grievance
11 procedure. The Director of the Department of Employee Relations
12 Counselors may allow modifications to the management steps of the
13 state grievance procedure for community services boards.

14 c. Notwithstanding the provisions of § 2-1-116 (i),
15 Constitutional officers' employees shall have access to the state not
16 be required to be covered by a grievance procedure; however, these
17 employees may be accepted in a local governing body's grievance
18 procedure at the discretion of the governing body of the county, city,
19 or town if agreed to by both the constitutional officer and the local
20 governing body but shall be excluded from the locality's personnel
21 system unless their inclusion in the local personnel system is agreed
22 to by both the constitutional officer and the locality.

23 d. Redevelopment and housing authorities created pursuant to §
24 36-4 and Employees of regional housing authorities created pursuant
25 to § 36-40 shall be included within the coverage of the state
26 grievance procedure if the authority has more than fifteen employees.
27 However, these employees promulgate and administer a grievance
28 procedure which is consistent with the provisions of the state

1 grievance procedure, including the definition of a grievance.
2 Employees of authorities created pursuant to § 36-4 may be accepted i'
3 a local governing body's grievance procedure if agreed to by both the
4 authority and the locality. Employees of authorities created pursuant
5 to § 36-40 may be accepted in the grievance procedure of a local
6 governing body that contributes financially to the operation of the
7 authority if agreed to by both the authority and the local governing
8 body locality . The state grievance procedure shall apply if a
9 housing authority does not promulgate an approved grievance procedure
10 or if its employees are not accepted in a local governing body's
11 grievance procedure; the housing authority shall provide its employees
12 copies of the state grievance procedure upon request.

13 e. A housing authority that promulgates its own grievance
14 procedure shall submit the procedure to the Director of the Department
15 of Employee Relations Counselors for approval. The Director may allow
16 modifications to the management steps of the procedure. The grievance
17 procedure shall provide for a panel hearing. A housing authority
18 shall not be required to have an administrative hearing officer in
19 employee termination cases, as provided in the state grievance
20 procedure, but may do so at its option. When a housing authority
21 elects to use an administrative hearing officer as the third panel
22 member in employee termination cases, the administrative hearing
23 officer shall be appointed by the Executive Secretary of the Supreme
24 Court. The appointment shall be made from the list of administrative
25 hearing officers maintained by the Executive Secretary pursuant to §
26 9-6.14:14.1 and shall be made from the appropriate geographical region
27 on a rotating basis. The housing authority shall bear the per diem
8 expenses and other costs of the administrative hearing officer. Panel

1 decisions shall be final and binding.

2 f. Employees of local social service departments and local social
3 service boards, community services boards, housing authorities and
4 local governing bodies who are covered by the state grievance
5 procedure shall have issues of grievability, including questions of
6 access to the procedure, determined by the Director of the Department
7 of Employee Relations Counselors; those employees who have been
8 accepted into a local governing body's grievance procedure shall have
9 such determinations made pursuant to the locality's procedure. For a
10 housing authority that promulgates its own grievance procedure, the
11 commissioners of the housing authority or their designee shall
12 determine issues of qualification for a panel hearing, subject to
13 judicial review pursuant to § 2.1-114.5:1 E.

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

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

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

25 2. Management steps shall provide for a review with higher levels
26 of management following the employee's reduction to writing of the
27 grievance and the relief requested on forms supplied by the agency or
28 the Department of Employee Relations Counselors. Personal face-to-face

1 meetings are required at these steps.

2 3. With the exception of the final management step, the only
3 persons who may be present in the management step meetings are the
4 grievant, the appropriate manager at the level at which the grievance
5 is being heard, and appropriate witnesses for each side. At the final
6 management step, the grievant, at his option, may have present a
7 representative of his choice. If the grievant is represented by legal
8 counsel, management likewise has the option of being represented by
9 counsel.

10 4. Qualifying grievances shall advance to the final step which
11 as described below:

12 a. Employees of the Department of Mental Health, Mental
13 Retardation and Substance Abuse Services who are terminated on the
14 grounds of patient abuse, and employees of the Department of
15 Corrections who work in institutions or have client or inmate contact
16 and who are terminated on the grounds of a criminal conviction, or are
17 terminated as a result of being placed on probation under the
18 provisions of § 18.2-251, may appeal their termination through the
19 grievance procedure only through the management steps. If resolution
20 is not forthcoming by the conclusion of the last management step, the
21 employee may advance the grievance to the circuit court of the
22 jurisdiction in which the grievance occurred for a de novo hearing on
23 the merits in lieu of a panel hearing. In its discretion, the court
24 may refer the matter to a commissioner in chancery to take such
25 evidence as may be proper and to make a report to the court. Both the
26 grievant and the respondent may call upon appropriate witnesses and be
27 represented by legal counsel or other representatives before the court
28 or the commissioner in chancery. Such representatives may examine,

1 cross-examine, question and present evidence on behalf of the grievant
2 or respondent before the court or commissioner in chancery without
3 being in violation of the provisions of § 54.1-3904. A termination
4 shall be upheld unless shown to have been unwarranted by the facts or
5 contrary to law or written policy. The decision of the court shall be
6 final and binding.

7 b. For employees who are not grieving termination, the final step
8 shall provide for a hearing before an impartial panel, consisting of
9 one member appointed by the grievant, one member appointed by the
10 agency head and a third member selected by the first two. In the event
11 that agreement cannot be reached as to the final panel member, the
12 chief judge of the circuit court of the jurisdiction wherein the
13 dispute arose shall select the third panel member. The panel shall not
14 be composed of any persons having direct involvement with the
15 grievance being heard by the panel, or with the complaint or dispute
16 giving rise to the grievance. Managers who are in a direct line of
17 supervision of a grievant , persons residing in the same household as
18 the grievant and the following relatives of a participant in the
19 grievance process or a participant's spouse are prohibited from
20 serving as panel members: spouse, parent, child, descendents of a
21 child, sibling, niece, nephew and first cousin. No attorney having
22 direct involvement with the subject matter of the grievance, nor a
23 partner, associate, employee or co-employee of the attorney shall
24 serve as a panel member.

25 In cases of termination of state

26 c. For employees grieving termination , the third panel member
27 shall not be selected in the manner described above, but shall be
28 appointed by the Director of the Department of Employee Relations

1 Counselors. The appointment shall be made from the list of
 2 administrative hearing officers maintained by the Supreme Court of
 3 Virginia pursuant to § 9-6.14:14.1 ~~on a geographic and~~ and shall be
 4 made from the appropriate geographical region on a rotating basis, as
 5 established by the Director of the Department of Employee Relations
 6 Counselors. In cases of termination of employees of local social
 7 service departments and local social service boards, community
 8 services boards, constitutional officers' employees and employees of
 9 redevelopment and housing authorities and regional housing authorities
 10 created pursuant to § 36-40 who are covered by the state grievance
 11 procedure, the third panel member shall be appointed by the Executive
 12 Secretary of the Supreme Court. The appointment shall be made from the
 13 list of administrative hearing officers maintained by the Executive
 14 Secretary pursuant to § 9-6.14:14.1 and shall be made from the
 15 appropriate geographical region on a rotating basis. The employing
 16 agency of the grievant shall bear the per diem expenses and other
 17 costs of the administrative hearing officer. Local governments that
 18 have their own grievance procedure shall not be required to have an
 19 administrative hearing officer in employee termination cases, but may
 20 do so at their option.

21 d. In all cases the third panel member shall be chairperson of
 22 the panel. The decision of the panel shall be final and binding and
 23 shall be consistent with provisions of law and written ~~polities~~
 24 policy. In grievances filed by state classified state employees, ~~the~~
 25 consistency of panel decisions the question of whether the relief
 26 granted by a panel is consistent with written policy shall be
 27 determined by the Director of the Department of Personnel and
 28 Training. In the case of other employees covered by the state

1 grievance procedure or employees covered by local government grievance
 2 procedures, the question of whether a ~~panel decision~~ the relief
 3 granted by a panel is consistent with written policy shall be
 4 determined by the chief ~~executive~~ administrative officer of the
 5 governmental agency which promulgated the policy or his designee
 6 unless such person has a direct involvement with the grievance, in
 7 which case the decision shall be made by the Commonwealth's attorney
 8 of the jurisdiction in which the grievance is pending. Both the
 9 grievant and the respondent may call upon appropriate witnesses and be
 10 represented by legal counsel or other representatives at the panel
 11 hearing. Such representatives may examine, cross-examine, question and
 12 present evidence on behalf of the grievant or respondent before the
 13 panel without being in violation of the provisions of § 54-44
 14 54.1-3904 . The Director of the Department of Employee Relations
 15 Counselors shall promulgate rules of conduct for panel hearings-

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

22 6. After the initial filing of a written grievance, failure of
 23 either party to comply with all substantial procedural requirements of
 24 the grievance procedure without just cause ~~will~~ shall result in a
 25 decision in favor of the other party on any grievable issue, provided
 26 the party not in compliance fails to correct the noncompliance within
 27 five work days of receipt of written notification by the other party
 28 of the compliance violation. Such written notification by the grievant

1 shall be made to the agency head or chief administrative officer .
 2 Failure of either party without just cause to comply with all
 3 substantial procedural requirements at the panel hearing shall result
 4 in a decision in favor of the other party. For employees covered by
 5 the state grievance procedure, compliance determinations shall be made
 6 by the Director of the Department of Employee Relations Counselors.
 7 The commissioners of the housing authority shall make compliance
 8 determinations for employees of housing authorities that have their
 9 own procedures. Compliance determinations made by the commissioners
 10 of the housing authority shall be subject to judicial review.

11 E. Determining issues qualifying for a panel hearing. - Decisions
 12 regarding whether ~~or not~~ a matter qualifies for a panel hearing shall
 13 be made by the agency head or chief administrative officer at the
 14 request of the agency or grievant within five work days of the
 15 request. A copy of the ruling shall be sent to the grievant , ~~to the~~
 16 ~~Director of the Department of Personnel and Training,~~ and ~~to the~~
 17 ~~Director of the Department of Employee Relations Counselors~~ .
 18 Decisions of the agency head or chief administrative officer may be
 19 appealed to the circuit court having jurisdiction in the locality in
 20 which the grievant is employed for a hearing ~~de novo~~ on the issue of
 21 whether ~~or not~~ the grievance qualifies for a panel hearing.
 22 Proceedings for review of the decision of the agency head or chief
 23 administrative officer shall be instituted by filing a notice of
 24 appeal with the agency head or chief administrative officer within
 25 five work days from the date of receipt of the decision and giving a
 26 copy thereof to all other parties. Within five work days thereafter,
 27 the agency head or chief administrative officer shall transmit to the
 28 clerk of the court to which the appeal is taken: a copy of the

1 decision of the agency head or chief administrative officer , a copy
 2 of the notice of appeal, and the exhibits. A list of the evidence
 3 furnished to the court shall also be furnished to the grievant. The
 4 failure of the agency head or chief administrative officer to transmit
 5 the record within the time allowed shall not prejudice the rights of
 6 the grievant. The court, on motion of the grievant, may issue a writ
 7 of certiorari requiring the agency head or chief administrative
 8 officer to transmit the record on or before a certain date. Within
 9 thirty days of receipt of such records by the clerk, the court,
 10 sitting without a jury, shall hear the appeal on the record
 11 transmitted by the agency head or chief administrative officer and
 12 such additional evidence as may be necessary to resolve any
 13 controversy as to the correctness of the record. The court, in its
 14 discretion, may receive such other evidence as the ends of justice
 15 require. The court may affirm the decisions of the agency head or
 16 chief administrative officer or may reverse or modify the decision.
 17 The decision of the court shall be rendered no later than the
 18 fifteenth day from the date of the conclusion of the hearing. The
 19 decision of the court is final and is not appealable.

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

23 § 2.1-114.5:6. Department of Employee Relations Counselors;
 24 general powers and duties of Director.--The Director of the Department
 25 of Employee Relations Counselors shall have the following general
 26 powers and duties :.

27 1. To employ such personnel as may be required to carry out the
 28 purposes of this chapter.

1 2. To provide information upon request of any state employee
2 concerning personnel policies, rules and regulations, and statutes
3 applicable to the use of the grievance procedure and to provide such
4 forms as may be necessary for the proper use of the grievance
5 procedure .

6 3. To establish a toll-free telephone number for the purpose of
7 carrying out the provisions of this section.

8 4. To investigate any and all allegations of reprisal as the
9 result of the utilization of the grievance procedure and to advise the
10 agency head and the Director of the Department of Personnel and
11 Training of such findings-

12 5- To collect information and statistical data in regard to the
13 use of the grievance procedure.

14 6- 5. To make such recommendations to the Governor and General
15 Assembly as he deems appropriate for the improvement of the grievance
16 procedure and management- employee -management relations.

17 6. To establish

18 7- The Director of the Department of Employee Relations
19 Counselors: (i) is responsible for establishing the grievance
20 procedure 7 (iii) shall .

21 7. To make and disseminate interpretations of the grievance
22 procedure 7 (iii) shall .

23 8. To promulgate rules of conduct for panel hearings 7 (iv) shall
24 have the authority to rule on grievability of issues at the management
25 steps of the grievance procedure, and (v) shall exercise authority to
26 direct full compliance with the grievance procedure process . In
27 instances where the Director of the Department of Employee Relations
28 Counselors finds such issue is not grievable, the employee may elect

1 to have a determination for suitability for panel hearing rendered on
 2 the issue by the agency head and ultimately by the circuit court, if
 3 necessary. Moreover, the Director of the Department of Personnel and
 4 Training is the final authority in establishing and interpreting all
 5 other personnel practices and policies affecting state employees, and
 6 has the authority to assure full compliance with such policies.

7 9. For employees who are covered by the state grievance
 8 procedure, to (i) provide forms necessary for the proper use of the
 9 grievance procedure, (ii) direct full compliance with the grievance
 10 procedure process, (iii) investigate allegations of reprisal as the
 11 result of the utilization of the grievance procedure and advise the
 12 agency head of such findings, and (iv) rule on the grievability of
 13 issues, including the question of access to the procedure, at the
 14 management steps of the grievance procedure.

15 10. To establish a comprehensive program of employee-management
 16 relations.

17 11. To carry out those responsibilities assigned to the
 18 Department in Title 15.1.

19 ~~8-~~ 12. To do all acts necessary or convenient to carry out
 20 such these powers and duties.

21 § 15.1-7.2. Provision of grievance procedure; training
 22 programs.--A. Each governing body required to establish a grievance
 23 procedure under § 15.1-7.1 shall have a grievance procedure which
 24 fully and closely complies with the definition of a grievance and is
 25 consistent with the minimum provisions of the state grievance
 26 procedure as described in § ~~2-1-114.5-1~~ , including the definition of
 27 a grievance ; provided that . However, any local government's panel
 28 composition method approved by the Director of the Department of

1 Personnel and Training prior to the enactment of § 2.1-114.5:1 D and
2 ensuring an impartial panel shall be considered in substantial
3 compliance with such subsection. Local governments that have their own
4 grievance procedures shall not be required to have an administrative
5 hearing officer in employee termination cases, as provided in the
6 state grievance procedure, but may do so at their option. When a
7 local government elects to use an administrative hearing officer as
8 the third panel member in employee termination cases, the
9 administrative hearing officer shall be appointed by the Executive
10 Secretary of the Supreme Court. The appointment shall be made from the
11 list of administrative hearing officers maintained by the Executive
12 Secretary pursuant to § 9-6.14:14.1 and shall be made from the
13 appropriate geographical region on a rotating basis.

14 ~~Questions of grievability shall be resolved~~ Grievability,
15 including the question of access to the procedure, shall be determined
16 by the chief administrative officer of the locality or a department
17 head authorized by the chief administrative officer to decide the
18 issue of grievability. No city, town, county or Commonwealth's
19 ~~Attorney~~ attorney shall be authorized to decide the issue of
20 grievability. Decisions of the chief administrative officer or the
21 designated department head as to grievability may be appealed to the
22 circuit court having jurisdiction in the locality wherein the grievant
23 is employed for a hearing ~~de novo~~ on the issue of grievability - ~~Such~~
24 ~~appeal shall follow the same procedures as those established in~~
25 pursuant to § 2.1-114.5:1 E.

26 B. Each governing body required to establish a grievance
27 procedure may, in cooperation with the Director of the Department of
28 Employee Relations Counselors, develop a comprehensive training and

1 instructional program. The program may be implemented with the similar
2 state training program developed pursuant to the provisions of §
3 2.1-114.5:2 and shall include comprehensive training for all local
4 government supervisory personnel with emphasis upon the importance of
5 harmonious employee-employer relations.

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

10 C. Local governing bodies shall have authority to accept
11 employees of local social service departments, local social service
12 boards, community services boards, constitutional officers,
13 redevelopment and housing authorities and regional housing authorities
14 into their grievance procedure.

15 § 37.1-195. Community services board; appointment; membership;
16 duties of fiscal agent.--Every city, county or combination of counties
17 or cities or counties and cities establishing a community mental
18 health, mental retardation and substance abuse services program,
19 before it shall come within the provisions of this act, shall
20 establish a single community services board, with neither less than
21 five nor more than fifteen members, except that any board established
22 by four or more cities, counties or combination thereof may consist of
23 as many as sixteen members. When any city or county singly establishes
24 a program, the board shall be appointed by the governing body of the
25 local political subdivision establishing such a program. When any
26 combination of counties or cities or counties and cities establishes a
27 community services program, the board of supervisors of each county in
28 the case of counties or the council in the case of cities shall

1 establish the size of the board, shall elect and appoint the members
2 of said the board and shall designate an official of one member city
3 or county to act as fiscal agent for the board.

4 The county or city which comprises a single board and the county
5 or city whose designated official serves as fiscal agent for the board
6 in the case of joint boards shall annually audit the total revenues of
7 the board and its programs and shall, in conjunction with the other
8 participating political subdivisions in the case of joint boards,
9 approve a grievance procedure which shall apply to all employees of
10 the board and arrange for the provision of legal services to the
11 board.

12 No such board shall be composed of a majority of elected
13 officials as members, nor shall any county or city be represented on
14 such board by more than one elected official.

15 The board appointed pursuant to this section shall be responsibl
16 to the governing body or bodies of the county or city or combination
17 thereof which established such board.

18

#

EXPLANATION OF CHANGES

Page 3, lines 11 - 13

§ 2.1-114.5--This section deals with the duties of the Department of Personnel and Training and was amended to add language that was stricken in § 2.1-114.5:6 (see page 17, lines 5-8).

§ 2.1-114.5:1--This section is the major section describing the grievance procedure and contains numerous substantive, organizational and housekeeping changes.

Page 4, line 10

"Handicap" to "disability"--This was changed because "disability" is the current legal terminology.

Page 5, lines 8-9

"All permanent state governmental personnel"--This was changed to "all classified state employees" to reflect the wording used in personnel policies.

Pages 5-6, lines 24-18

This paragraph was moved to page 10, line 14, because it more appropriately belongs under subsection D--Grievance procedure steps.

Pages 6-7, lines 21-3

Language was added to allow local social service departments and boards to modify the management steps of the state grievance procedure to make the grievance procedure more workable for offices with a small number of employees. Modification is subject to the approval of the Director of the Department of Employee Relations Counselors.

Page 7, lines 4-13

Language was added to provide that employees of community services boards shall be covered by the state grievance procedure or the grievance procedure of a local governing body if agreed to by the locality and the community services board. Community services boards will be permitted to modify the management steps of the state grievance procedure to make it more workable for offices with a small number of employees. Modification is subject to the approval of the Director of the Department of Employee Relations Counselors.

Page 7, lines 14-22

Constitutional officers are no longer required to provide a grievance procedure for their employees. However, the constitutional officer may elect to have his employees included in a local governing body's grievance procedure if agreed to by the local governing body.

Pages 7-8, lines 23-12

A requirement that redevelopment and housing authorities have a grievance procedure was added. Redevelopment and housing authorities and regional housing authorities are allowed to either promulgate their own procedure or have their employees accepted into a local governing body's procedure. The state procedure applies only if neither of these options is exercised. Procedures must contain the state definition of a grievance and must be consistent with the provisions of the state grievance procedure. The provision that a regional housing authority have 15 employees before being required to have a grievance procedure was eliminated.

Pages 8-9, lines 13-1

Grievance procedures promulgated by housing authorities must be approved by the Director of the Department of Employee Relations Counselors. The Director may allow modifications to the management steps of the procedure. Housing authorities are not required to have an administrative hearing officer in employee termination cases but must follow specified procedures if they choose to do so.

Page 9, lines 2-13

Subdivision f provides that employees of local social service boards and departments, community services boards, housing authorities and local governing bodies who are covered by the state grievance procedure will have issues of grievability, including questions of access to the procedure, determined by the Director of the Department of Employee Relations Counselors. Employees who have been accepted into a local governing body's procedure will have grievability determinations made in accordance with the locality's procedure. For housing authorities that promulgate their own procedure, the commissioners of the housing authority will determine issues of qualification for panel hearing, subject to judicial review.

Page 10, line 12

Subdivision 4 a was moved from page 5, line 24.

Page 11, lines 17-18

A prohibition against persons who reside in the same household as the grievant serving as a panel member for the grievant was added because of concern about impartiality.

Page 12, lines 7-9

Community services boards and redevelopment and housing authorities were added because they will now fall under the state grievance procedure in some instances. Constitutional officers' employees were stricken because there is no longer a requirement that they be covered by a grievance procedure.

Page 12, lines 17-18

This language was added to clarify that this provision applies only to local governments that have their own procedure.

Page 12, lines 25-26; Page 13, lines 4-5

The "consistency of panel decisions" was changed to "the question of whether the relief granted by a panel is consistent" with written policy to clarify that the Director of the Department of Personnel and Training and the chief administrative officer of the governmental agency do not have the authority to examine the merits of the case. They can only look at the relief granted by the panel and determine whether that relief is consistent with written policy.

Page 13, line 4

The term "chief executive officer" was changed to "chief administrative officer" to reflect the term used for local governments.

Page 13, lines 14-15

This sentence was stricken because § 2.1-114.5:6, which lists the Director's powers and duties, already states that the Director shall promulgate rules of conduct for panel hearings.

Page 14, line 1

The term "chief administrative officer" was added throughout this section to reflect the term used for local governments.

Page 14, lines 4-10

This provision was added so that there will be a designated person to make compliance determinations for employees who are covered by the state grievance procedure and housing authority employees whose employers have promulgated their own procedure.

Page 14, lines 15-17

This language was stricken because regulations contain this requirement.

Page 14, line 20

The words "de novo" were stricken because the hearing described in subsection E is predominantly a record review rather than a new hearing.

§ 2.1-114.5:6—This section states the powers and duties of the Director of the Department of Employee Relations Counselors and was rewritten to improve its organization and clarity and to make a few substantive changes.

Page 16, lines 3-5

This provision became 9(i).

Page 16, lines 8-11

This provision became 9(iii).

Page 16, lines 23-26

This provision became 9(iv). The words "including the question of access to the procedure" were added to clarify that the authority to rule on the grievability of issues includes the authority to decide questions of access to the grievance procedure. A similar change was made for local governments (see page 18, lines 14-15).

Page 16, lines 25-26

This provision became 9(ii).

Pages 17-18, lines 26-3

This sentence was eliminated because it is not a power or duty of the Director of the Department of Employee Relations Counselors and its provisions are already covered in subsection E of § 2.1-114.5:1.

Page 17, lines 3-6

This sentence was stricken because it states a duty of the Director of the Department of Personnel and Training rather than the Director of the Department of Employee Relations Counselors. Most of the authority given in this sentence is already contained in § 2.1-114.5 but that section was amended to include all of the authority (page 3, lines 11-13).

Page 17, lines 7-14

Subdivision 9 is a rewriting of existing subdivisions 2, 7(v), 4 and 7(iv).

Page 17, lines 15-16

The duty to establish a comprehensive program of management-employee relations was added because the Director currently performs this function.

Page 17, lines 17-18

Subdivision 11 has been added to alert people that the Department has duties under Title 15.1.

§ 15.1-7.2—The changes below affect local governing bodies.

Page 18, lines 3-4

This language was added to clarify that this provision applies only to local governments that have their own procedure.

Page 18, lines 14-15

The words "including the question of access to the procedure" were added to clarify that the authority to rule on the grievability of issues includes the authority to decide questions of access to the grievance procedure. Similar authority was given to the Director of the Department of Employee Relations Counselors on page 17, lines 14 through 16.

Page 18, line 23

De novo stricken--The words "de novo" were stricken because the hearing described in § 2.1-114.5:1 E is clearly an appeal of the first decision and not a new hearing. A similar change was made in the state procedure.

Page 19, lines 10-14

Subsection C was added to make it clear that local governing bodies have the authority to accept the employees listed in their grievance procedure.

Page 20, lines 9-10

§ 37.1-195 -- This language was stricken because employees of community services boards are now required to be covered by the state or a local grievance procedure and community services boards are no longer allowed to establish their own grievance procedures.

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IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 786-3591

November 23, 1988

TO: The Member Addressed of the Joint Subcommittee Studying the State
Grievance Procedure (SJR 45)

FROM: ^{JFB} Jessica F. Bolecek, Staff Attorney

RE: Draft Report of the Joint Subcommittee Studying the State Grievance
Procedure

Enclosed please find a copy of the draft Report of the Joint Subcommittee Studying the State Grievance Procedure (SJR 45). The legislation is attached as Appendix B and an explanation of the changes is attached as Appendix C. The changes requested by the subcommittee at its September 19, 1988, meeting have been incorporated in the draft with a few exceptions. The words "disability as defined in § 51.01-3" were not included because it was discovered that "person with a disability" was the term defined and there does not seem to be a clear way to include this (Draft pg. X, line X). Also the term "commissioners of the housing authority" was used instead of "board of the housing authority" (see Virginia Code §§ 36-11, 36-45).

As instructed by the subcommittee, I inserted language stating that the local governing body has authority to accept employees of constitutional officers into its grievance procedure (Draft, pg. X, line X). The subcommittee wanted to remove any doubts about the local governing body's authority to accept the employees of constitutional officers into its grievance procedure. The draft provides that employees of social services boards and departments, community services boards and regional and redevelopment and housing authorities may be accepted into a local governing body's grievance procedure but there is no specific provision giving the local governing body the authority to accept these employees. Although these employees are statutorily required to be covered by a grievance procedure and constitutional officers' employees are not, a question could be raised about the specific granting of authority in one case and not the other.

Memorandum to Members of the Joint Subcommittee
Studying the State Grievance Procedure
November 23, 1988
Page 2

The draft report and legislation have been reviewed by the Department of Employee Relations Counselors.

Please contact me by December 7, 1988, if you have comments about the report or legislation. If I do not hear from you by that date I will assume that you concur with the report. If I am not in the office please give your comments to Angela Bowser. Thank you for your attention to this matter.

MEMBERS:

Senator Elliot S. Schewel, Chairman
Delegate Ralph L. Axelle, Jr., Vice Chairman
Senator Wiley F. Mitchell, Jr.
Senator Joseph B. Benedetti
Delegate James F. Almand
Delegate Clifton A. Woodrum
Delegate Clinton Miller

Enclosure

cc: Phyllis C. Katz