

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2014

Bill Number: H.753 Name of Bill: Public safety; Vermont Criminal Justice Training Council; law enforcement officer regulation

Agency/Dept: VSP Author of Bill Review: Lt. Jeffrey R. Danoski

Date of Bill Review: 2/7/2014 Status of Bill: (check one):

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies

Recommended Position:

☐ Support ☒ Oppose ☐ Remain Neutral ☐ Support with modifications identified in # 8 below

Analysis of Bill

1. **Summary of bill and issue it addresses.** This bill proposes to make miscellaneous amendments to provisions regarding the Vermont Criminal Justice Training Council and law enforcement regulation. Simply stated, the bill proposes to give the Vermont Criminal Justice Training Council more authority to discipline and decertify law enforcement officers, law enforcement applicants and regulate law enforcement certifications.

The Key Sponsor of this Bill has not contacted me or gotten back to me in reference to this Bill as of this review.

2. **Is there a need for this bill?** No.

The Department of Public Safety-Vermont State Police has an established and extensive disciplinary procedure and Process for its sworn members that include a system of checks and balances and review by the Commissioner, Senior Command Staff and the State Police Advisory Commission (SPAC).

The Vermont State Police has an extensive and thorough applicant hiring process that includes, but is not limited to: extensive criminal and motor vehicle records checks, a credit history report, a psychological inventory assessment, a polygraph examination and background investigation. This process identifies and eliminates applicants who do not meet the high standards required to be hired as a Vermont State Trooper.

In addition, the Vermont Criminal Justice Training Council's Rules Committee has been working on rules and recommendations concerning law enforcement regulation for some time. While a draft has been prepared by the Committee, it has not moved forward in several months for unknown reasons. By utilizing this process, it would be a means to address these issues while seeking input from Council members and putting it up to the Council for vote.

Another alternative method of addressing the concerns and issues contained in this Bill would be to require law enforcement agencies to increase and/or standardize their individual applicant hiring

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standards, guidelines and processes. Many of the issues listed in this bill would be addressed in the hiring process and prohibit an applicant from being hired and certified as a law enforcement officer.

- 3. What are likely to be the fiscal and programmatic implications of this bill for this Department?** The implications would take away and/or limit the Commissioner's Authority to impose discipline. It would affect the internal affairs process and the input and review by the Commissioner, Senior Command and the State Police Advisory Committee. In addition, it would open up our internal affairs Investigations, which are currently protected under law, to outside entities.

- 4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

The Vermont Criminal Justice Training Council does not have sufficient staff to conduct these types of investigations into misconduct that may lead to revocation or suspension of an officer's certification. It is safe to assume that a recommendation for suspension or revocation of a certification could be made in error. This in turn would affect an agency staffing levels and police services provided to the community or communities the agency serves.

- 5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example, public, municipalities, organizations, business, regulated entities, etc)* Answered in number 4.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? The Director of the Vermont Police Academy supports this bill because it increases accountability and increases enforcement authority for him and the Council. He advised that in some instances, he did not think the bill went far enough. The Director did advise that the Vermont Criminal Justice Rules Committee were working on and came up with recommendations and a draft proposal that was similar to the proposed bill. He advised that it was being reviewed by Cindy McGuire from the AG's Office, (who was a member of the Vermont Criminal Justice Training Council), and he's not sure what is happening with it as she is leaving the Attorney General's Office. The Director further advised that he would like to see more discussion on the bill before it went any further; as he feels that there may need to be some changes, modifications, additions, subtractions and clarifications made to it before it became law.

6.2 Who else is likely to oppose the proposal and why? The Vermont Troopers Association (VTA) which represents all Vermont State Troopers, Corporals and Sergeants strongly opposes this bill for numerous reasons as stated below; This Bill would circumvent the collective bargaining agreement between the State and the VTA, it is contrary to Vermont Labor Board proceedings for members, it circumvents the internal affairs process and the input and review from the Commissioner, Senior Command and the State Police advisory Commission and the imposition of discipline by the Commissioner of Public Safety.

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In addition, the Council has no vested interest in an employee of a law enforcement agency. They don't have any knowledge of an employee, their past history and/or work performance. Once certification is suspended or revoked, the chances for employment in the law enforcement profession for the affected person in this state or another state or jurisdiction could/would be severely hampered. While in many circumstances, depending on the conduct and severity of the offense, this may be justified, in other cases, it may be unjust.

The Vermont Sheriff's Association does not support this Bill as introduced. I spoke with Sheriff Keith Clark, Windham County, who is President of the Vermont Sheriff's Association for their stance. The Bill as written and introduced usurps the authority of the Sheriff(s) on how they handle and run their Sheriff's Departments/Offices. Agency's know their personnel best and are better suited at handling and dealing with problems as they arise and in finding solutions. In addition, the Sheriff's Association advises that this Bill as written; and as introduced; is very broad, unclear, too vague and open to interpretation and re-affirmed that they do not support this Bill.

I spoke with Springfield, VT Police Chief Doug Johnston, who is the President of the Vermont Chiefs' of Police Association. The Vermont Chiefs' of Police Association does support the "language clean up" section in the first portion of this Bill, but they do not support Section 2356 of this Bill as written and introduced. The Chiefs' Association feels that this Bill is way too broad and wonder where the investigation procedure and process of this Bill is contained and how it will be conducted and by whom. They further stated that; The Law Enforcement Advisory Board dealt with this during the last legislative session and made recommendations out of their discussions. They recommended that this report be reviewed for recommendations that are proposed to deal with this issue. Most of this wording, if not all; is taken out of Title 3 Professional Licensing and we can see some conflict with investigations, discipline etc.

7. Rationale for recommendation: This Bill should be opposed as introduced based on the facts and arguments listed above, and the fact that the Department of Public Safety-Vermont State Police has an established and extensive disciplinary process and procedure for its sworn members. This includes review and input from the State Police Advisory Commission whose responsibilities are outlined below.

State Police Advisory Commission

All allegations of misconduct by State Police officers are given to the State Police Advisory Commission (SPAC) for review. By statute, SPAC is made up of independent Vermont citizens who have no connection to the Vermont State Police. The State Police Advisory Commission provides advice and counsel to the Commissioner of Public Safety in carrying out his or her responsibilities for the management, supervision and control of the Vermont State Police. The Commission also advises the Commissioner regarding rules concerning promotions, grievances, transfers, internal investigations and discipline.

20 V.S.A. § 1922. Creation of commission; members; duties

(a) There is hereby created the state police advisory commission, which shall provide advice and counsel to the commissioner in carrying out his responsibilities for the management, supervision and control of the Vermont state police.

(b) The commission shall consist of seven members, at least one of whom shall be an attorney and one of

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whom shall be a retired state police officer, to be appointed by the governor with the advice and consent of the senate.

(c) Members of the commission shall serve for terms of four years, at the pleasure of the governor. Of the initial appointments, one shall be appointed for a term of one year, two for terms of two years, two for terms of three years, and two for terms of four years. Appointments to fill a vacancy shall be for the unexpired portion of the term vacated. The chairman shall be appointed by the governor.

(d) The creation and existence of the commission shall not relieve the commissioner of his duties under the law to manage, supervise and control the state police.

(e) To ensure that state police officers are subject to fair and known practices, the commission shall advise the commissioner with respect to and review rules concerning promotion, grievances, transfers, internal investigations and discipline.

(f) Members of the commission shall be paid per diem compensation and reimbursement for expenses in accordance with section 1010 of Title 32.

In addition, the passage of this Bill would open up our Internal Affairs Investigations to other entities. These investigations are currently protected by law and should remain so.

The Council should not determine the employment status of a member of this Department. It should be up to the Commissioner and the entire DPS-VSP Disciplinary Procedure and Process to determine employment status in conjunction with any rights and protections that a member may be entitled to before being disciplined and decertified by an outside entity.

For example, a member has an IA. The member has been found to have committed minor misconduct. The member is disciplined and then continues their employment. Under this Bill, the Council gets a copy of the IA Investigation and determines that the member committed an offense that would lead to decertification and end their career as a law enforcement officer under this Bill.

8. Specific modifications that would be needed to recommend support of this bill: N/A.

Secretary/Commissioner has reviewed this document



Date: 3/11/14

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