

1 H.490

2 Senator Sears moves that the bill be amended by adding the following new
3 sections:

4 Sec. X. 13 V.S.A. § 5241 is amended to read:

5 § 5241. INEFFECTIVE ASSISTANCE CLAIM

6 (a) No action shall be brought for professional negligence against a
7 criminal defense attorney under contract with or providing ad hoc legal
8 services for the Office of the Defender General unless the plaintiff has first
9 successfully prevailed in a claim for postconviction relief based upon
10 ineffective assistance of counsel in the same or a substantially related matter.
11 Failure to prevail in a claim for postconviction relief based upon ineffective
12 assistance of counsel under contract with or providing ad hoc legal services for
13 the Office of the Defender General shall bar any claim against the attorney
14 based upon the attorney's representation in the same or a substantially related
15 matter.

16 (b) In the performance of duties pursuant to a contract with or providing
17 ad hoc legal services to the Office of the Defender General, an attorney shall
18 have the benefit of sovereign immunity to the same extent as an attorney
19 employed by the Defender General.

20 Sec. 1. 13 V.S.A. § 5254 is amended to read:

21 § 5254. PERSONNEL DESIGNATION AND EXPENDITURES

1 (a) The ~~defender general~~ Defender General, ~~deputy defender general~~
2 Deputy Defender General, public defenders and deputy public defenders shall
3 be exempt from the classified ~~state~~ State service.

4 (b) Clerical and office staff in the ~~office of the defender general~~ Office of
5 the Defender General and in all local offices shall be hired by the ~~defender~~
6 ~~general~~ Defender General. Clerical and office staff shall be ~~state~~ State
7 employees paid by the ~~state~~ State, and shall receive those benefits and
8 compensation available to classified ~~state~~ State employees who are similarly
9 situated, unless otherwise covered by the provisions of a collective bargaining
10 agreement setting forth the terms and conditions of employment, negotiated
11 pursuant to the provisions of 3 V.S.A. chapter 27 ~~of Title 3~~. Clerical and office
12 staff employed by the ~~office of the defender general~~ Office of the Defender
13 General shall not be part of the classified service as set forth in 3 V.S.A.
14 chapter 13 ~~of Title 3~~.

15 (c) The ~~deputy defender general~~ Deputy Defender General shall be entitled
16 to compensation at an annual rate that does not exceed an amount \$500.00 less
17 than the salary of the ~~defender general~~ Defender General. The public
18 defenders and deputy public defenders shall be entitled to compensation at
19 annual rates not to exceed an amount \$1,000.00 less than the salary of the
20 ~~defender general~~ Defender General.

1 (d) The ~~defender general~~ Defender General is responsible for assuming
2 expenses for his or her office and all local offices. The entirety of expenditures
3 shall not exceed those set in the annual budget of the ~~office of the defender~~
4 ~~general~~ Office of the Defender General and such expenditures shall be subject
5 to the provisions of ~~section 32 V.S.A. § 702 of Title 32.~~

6 (e) The Defender General shall receive an early retirement allowance equal
7 to that of a State’s Attorney or sheriff.

8 Sec. 2. 3 V.S.A. § 455 is amended to read:

9 § 455. DEFINITIONS

10 (a) Unless a different meaning is plainly required by the context, the
11 following words and phrases as used in this subchapter shall have the
12 following meanings:

13 * * *

14 (4) “Average final compensation” shall mean:

15 * * *

16 (C) For purposes of determining average final compensation for
17 group A or group C members, a member who has accumulated unused sick
18 leave at retirement shall be deemed to have worked the full normal working
19 time for his or her position for 50 percent of such leave, at his or her full rate of
20 compensation in effect at the date of his or her retirement. For purposes of
21 determining average final compensation for group F members, unused annual

1 or sick leave, termination bonuses and any other compensation for service not
2 actually performed shall be excluded. The average final compensation for a
3 State’s Attorney and the Defender General shall be determined by the State’s
4 Attorney’s or the Defender General’s highest annual compensation earned
5 during his or her creditable service.

6 * * *

7 (9) “Employee” shall mean:

8 * * *

9 (B) any regular officer or employee of the Department of Public
10 Safety assigned to police and law enforcement duties, including the
11 Commissioner of Public Safety appointed before July 1, 2001; but, irrespective
12 of the member’s classification, shall not include any member of the General
13 Assembly as such, any person who is covered by the Vermont Teachers’
14 Retirement System, any person engaged under retainer or special agreement or
15 C beneficiary employed by the Department of Public Safety for not more than
16 208 hours per year, or any person whose principal source of income is other
17 than State employment. In all cases of doubt, the Retirement Board shall
18 determine whether any person is an employee as defined in this subchapter.
19 Also included under this subdivision are employees of the Department of
20 Liquor Control who exercise law enforcement powers, employees of the
21 Department of Fish and Wildlife assigned to law enforcement duties, motor

1 vehicle inspectors, full-time deputy sheriffs employed by the State of Vermont,
2 full-time members of the Capitol Police force, investigators employed by the
3 Criminal Division of the Office of the Attorney General, Department of State's
4 Attorneys, Department of Health, or Office of the Secretary of State, who have
5 attained full-time certification from the Vermont Criminal Justice Training
6 Council, who are required to perform law enforcement duties as the primary
7 function of their employment, and who may be subject to mandatory
8 retirement permissible under 29 U.S.C. § 623(j), who are first included in
9 membership of the system on or after July 1, 2000. Also included under this
10 subdivision are full-time firefighters employed by the State of Vermont and the
11 Defender General.

12 * * *

13 Sec. 3. 3 V.S.A. § 459 is amended to read:

14 § 459. NORMAL AND EARLY RETIREMENT

15 * * *

16 (d) Early retirement allowance.

17 * * *

18 (5) Notwithstanding subdivisions (1) and (2) of this subsection, a State's
19 Attorney, the Defender General, or sheriff who has completed 20 years of
20 creditable service, of which 15 years has been as a State's Attorney, the

