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SFA**BILL ANALYSIS**

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Senate Bill 553 (Substitute S-3 as passed by the Senate)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 12-2-97

RATIONALE

The Law Enforcement Officers Training Council was created in statute over 30 years ago, and is responsible for establishing minimum employment standards for police officers. The standards must cover such matters as physical and educational requirements, minimum courses of study at approved police training schools, and basic training requirements. Although Michigan's standards are said to be among the most comprehensive in the nation, new demands apparently make it necessary to revisit the Council's enabling Act. For example, there currently is no system under which law enforcement agencies can track the employment history of police officers or learn the reason for a prior discharge. The Act also does not contain sanctions for misconduct, and does not authorize the Council to recover the cost of training. It has been suggested that these and other needs should be addressed in the Act.

CONTENT

The bill would amend the Michigan Law Enforcement Officers Training Council Act to rename it the "Commission on Police Standards Act" and reestablish the Law Enforcement Council as the "Commission on Police Standards" in the Department of State Police. The bill also would do all of the following:

- Provide for the Commission to grant certification to a person who met the Commission's standards.
- Require the Commission to promulgate rules for the revocation of certification.
- Authorize the Commission to investigate alleged violations of the Act.
- Require a law enforcement agency to maintain an employment history record for each officer employed by the agency.

- Allow the Commission to establish and charge certain fees.
- Revise provisions regarding the allocation of money in the Law Enforcement Officer Training Fund.

Commission/Minimum Standards

The bill would replace the current Law Enforcement Council with the proposed Commission on Police Standards. The Commission would consist of the same number of members as the Council (the Attorney General, or his or her designee; the Director of the Department of State Police, or his or her designee; and nine members appointed by the Governor, with the advice and consent of the Senate, from specified police officer organizations). The bill provides that an appointed individual could serve as a Commission member only while serving as a member of the respective organization. The terms of Council members would expire on the date that Commission members were appointed under the bill.

Currently, the Council is required to "prepare and publish minimum employment standards"; under the bill, the Commission would have to "promulgate rules to establish law enforcement officer minimum standards". Currently, the minimum employment standards must include, among other things, minimum courses of study with attendance requirements of at least 240 instructional hours. The bill specifies, instead, that the law enforcement officer minimum standards would have to include minimum courses of study, attendance requirements, and instructional hours, with at least four instructional hours on crime victims' rights, at approved police training schools. In addition, the rules promulgated by the Commission could include the establishment of preservice basic

training programs at colleges and universities.

Currently, the requirement for instruction at an approved police training school must be waived under certain circumstances involving previous employment as a law enforcement officer. The bill would retain this provision and also require the Commission to waive the requirement for a person who met the minimum standards when he or she was employed as a law enforcement officer, if the person had successfully completed the mandatory training and had been continuously employed as a law enforcement officer, but through no fault of that person the employing agency failed to obtain certification for him or her as required by the Act.

The bill provides that the rules would not apply to a member of a sheriff's posse or a police auxiliary temporarily performing his or her duty under the direction of the sheriff or police department. (Currently, the required instructional hours at a police training school do not apply to such a person.)

Certification

The bill would require the Commission to grant certification to a person who met the law enforcement officer minimum standards at the time he or she was employed as a law enforcement officer. Certification would be valid until it either was revoked or became void because the person discontinued employment as a Commission-certified law enforcement officer. "Certification" would mean either of the following:

- "A determination by the commission that a person meets the law enforcement officer minimum standards to be employed as a commission certified law enforcement officer and that the person is authorized under this act to be employed as a law enforcement officer".
- "A determination by the commission that a person was employed as a law enforcement officer before January 1, 1977 and that the person is authorized under this act to be employed as a law enforcement officer".

The Commission would have to grant certification to a person who was employed as a law enforcement officer before January 1, 1977, and who failed to meet the standards, if the person were authorized to be employed as a law enforcement officer under the Act. (The Act allows such an officer to continue employment and participate in training programs on a voluntary or

assigned basis; if the person discontinues employment as a law enforcement officer, he or she may be employed again in that capacity if the service has been for five years or more and the new employment occurs within two years after the person discontinues employment as a law enforcement officer.)

In addition, the Commission would have to grant certification to an elected sheriff. That certification would remain valid only while the sheriff was in office.

The Commission would have to issue a certificate to a person who had received certification. A certificate would remain the property of the Commission, however. Upon the request of the Commission, a person whose certificate was revoked or became void because of discontinued employment as a Commission-certified law enforcement officer would have to return the certificate to the Commission. A violation of this provision would be a misdemeanor, punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both.

Revocation

The Commission would have to promulgate rules to provide for the revocation of certification of law enforcement officers for one or more of the following:

- Conviction by a judge or jury of a felony.
- Conviction by a plea of guilty to a felony.
- Conviction by a plea of no contest to a felony.
- Making a false statement or committing fraud during the application for certification process.

("Felony" would mean a violation of a penal law of this State or another state that was either punishable by a term of imprisonment greater than one year, or expressly designated a felony by statute.)

The rules also would have to provide for the suspension of a law enforcement officer from use of the Law Enforcement Information Network (LEIN) in the event the officer wrongfully disclosed information from the network.

If the Commission issued a final decision or order to revoke an officer's certification, the decision or order would be subject to judicial review pursuant to the Administrative Procedures Act (APA). A

petition for judicial review could be filed only in the Circuit Court for Ingham County.

The Commission could issue a subpoena in a contested case to revoke a law enforcement officer's certification. The subpoena would have to be issued as provided in the APA.

Violations

The Commission could investigate alleged violations of the Act or rules promulgated under it. In conducting an investigation, the Commission could hold hearings, administer oaths, issue subpoenas, and order testimony to be taken at a hearing or by deposition. A hearing would have to be conducted in accordance with the APA. A final decision order issued by the Commission would be subject to judicial review pursuant to the APA.

The Commission could issue a subpoena to do either of the following:

- Compel the attendance of a witness to testify at a hearing or deposition and give testimony.
- Produce books, papers, documents, or other items.

If a subpoena issued by the Commission were not obeyed, the Commission could petition the circuit court to require the attendance of a witness or the production of the books, papers, documents, or other items. The circuit court could issue an order requiring the appearance or production. Failure to obey an order of the court could be punished as contempt of court.

Employment History

The bill would require a law enforcement agency to maintain an employment history record for each law enforcement officer employed by that agency, in the manner prescribed by the Commission. An agency would have to report the date on which each person commenced or terminated employment as a law enforcement officer for that agency, in the manner prescribed by the Commission.

Fees

The bill would allow the Commission to establish and charge a fee to recover the cost of testing and training individuals who were not employed by a Michigan law enforcement agency. The Commission also could establish and charge a fee

to recover the cost of issuing and reissuing certificates for individuals who were certified as law enforcement officers in Michigan.

The fees charged under the bill would have to be deposited into the Law Enforcement Officer Training Fund created in the Act.

Fund Allocation

The Act currently provides for allocation of appropriated amounts from the Law Enforcement Officer Training Fund for training costs and living expenses incurred by an officer that are necessitated by training requiring the officer to be away from his or her residence overnight. The bill also would require allocation for the maintenance and administration of police officer testing and certification. The bill specifies, however, that expenditures from the Fund to be appropriated by the Legislature for police officer testing and certification could not exceed the revenue generated from fees collected under the bill for the cost of testing and training and for issuing certificates.

MCL 28.601 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although the original Act served its purpose well, it now is outdated in some respects. The proposed name change would better reflect the purpose of the law, the new definitions would bring clarity to the statute, and the Commission would have enhanced authority and responsibilities. Among other things, the Commission would have to promulgate rules for the revocation of certification under certain circumstances, and could investigate alleged violations. The Commission also could recover the costs of training and assessing competency. Moreover, law enforcement agencies would be required to maintain an employment history record for each officer employed, and to report employment changes as required by the Commission. This would enable agencies to track the employment history of certified officers, and would enable officers to transfer more freely between agencies.

According to testimony before the Senate Judiciary Committee, Michigan is nationally recognized for its

police officer training delivery system, and will train and certify some 1,500 officers this year. While the current Act recognizes the honorable profession of police officers, the bill would bring even greater respectability to the law enforcement community.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would have a minimal fiscal impact on State and local government. Additional administrative responsibilities assigned to the State could be performed using existing resources. Some local law enforcement agencies could be required to increase clerical efforts in order to comply with the requirement that they maintain an employment history record for each law enforcement officer hired. The establishment of testing and training fees for individuals not employed by a Michigan law enforcement agency and a fee to recover the cost of issuing and reissuing certificates for certified law enforcement officers would result in additional restricted funds available for testing and certification activities. Should the State set these fees at \$50, the additional funds for testing and certification could total \$65,000 or more annually.

Fiscal Analyst: B. Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.