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BILL



ANALYSIS

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Senate Bill 449 (Substitute S-1 as reported)  
Sponsor: Senator Cameron S. Brown  
Committee: Homeland Security and Emerging Technologies

Date Completed: 6-8-09

### **RATIONALE**

Under the Commission on Law Enforcement Standards Act, a regularly employed person employed on or after January 1, 1977, as a member of a police force having a full-time officer is not empowered to exercise all the authority of a peace officer in Michigan, or be employed in a position for which the authority of a peace officer is conferred by statute, unless he or she has been certified by the Michigan Commission on Law Enforcement Standards (MCOLES). The Act's definition of "police officer" or "law enforcement officer" includes a regularly employed member of a law enforcement agency authorized and established pursuant to law, including common law, who is responsible for the prevention and detection of crime and the enforcement of Michigan's general criminal laws.

The term "regularly employed", however, is not defined in the statute, which has created questions over the years about the use of part-time police officers and sheriff's deputies. In response to these questions, MCOLES adopted the development of a regular employment standard as one of its strategic initiatives, and in 2007, began an examination of the issue by conducting surveys of the law enforcement community, stakeholder meetings, legal research, and data analysis. Based on these efforts, in 2008, the Commission adopted a regular employment standard of 520 hours per year, beginning in 2012. Some law enforcement agencies, particularly smaller local police departments that rely on part-time officers for budgetary reasons, have expressed concerns that their part-time officers might not meet this standard and will have to be laid off. In response, it has been suggested

that a standard of 120 hours per year should be enacted to resolve the uncertainty regarding "regular employment".

### **CONTENT**

The bill would amend the Commission on Law Enforcement Standards Act to define the term "regularly employed" as being employed by a police force or law enforcement agency for more than 120 hours annually.

MCL 28.602

### **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**

After several decades of uncertainty regarding the term "regularly employed", it would be appropriate to adopt a definition, either in statute or through the administrative rules process. The 520-hour standard proposed by MCOLES, however, does not take into account the changes that have occurred within the arena of law enforcement since 1965, when the Act was enacted. At that time, all training for police officers was conducted on the job. Today, law enforcement officers undergo 16 weeks of rigorous training in police academies. Many officers hold bachelor's degrees, and some hold master's degrees. The extensive preparation and education today's law enforcement officers receive provide assurance that they are well-qualified to perform their public safety duties.

While work experience certainly is a benefit to an officer, competency cannot be demonstrated simply by working a certain number of hours. There is a need to define "regularly employed" for purposes of compliance with the Act, but the 520-hour standard adopted by MCOLES is excessive. Some of the part-time people who will be affected are retired full-time law enforcement officers with years of experience that the MCOLES standard fails to acknowledge.

Many law enforcement agencies, especially small ones, employ officers on a part-time basis because of budgetary constraints. Such officers might be scheduled routinely several days every month. Others might fill in for officers on vacation or sick leave, or when additional personnel are needed for special events, such as parades. In any case, many work fewer than 520 hours per year, an average of 10 hours per week. Requiring those officers to work more hours could devastate local budgets, while simply laying them off could compromise public safety. County sheriff's departments and the Michigan State Police would face the increased burden of responding to calls that local agencies could no longer handle without additional resources.

Furthermore, the MCOLES standard would impede local control. Local police chiefs and county sheriffs know how best to serve their communities and allocate resources, and can be trusted to hire qualified law enforcement officers. Only one other state, Idaho, has enacted a regular employment standard, which is 120 hours. For all of these reasons, if a standard were to be adopted, the more than 120 hours proposed by the bill would be more appropriate than the MCOLES standard. The bill would strike an appropriate balance between the need to define "regular employment" and the situations law enforcement agencies face.

**Response:** It is not clear that any regular employment standard should be adopted. Law enforcement agencies have been functioning properly for many years without one. That only one state has found it necessary to implement a standard to date makes the need to do so in Michigan questionable.

### **Opposing Argument**

The proposed standard of more than 120 hours--an average of two to three hours per week--would not provide assurance of an officer's proficiency. Training and education

are essential; they are not, however, a substitute for actual experience gained on the job. With regard to many duties, particularly physical tasks such as firing a weapon or driving a police car, competence increases through repetition. It is questionable whether two hours per week give an officer an adequate opportunity to improve his or her skills.

The Commission has delayed implementation of the 520-hour standard until 2012 to give law enforcement agencies time to make necessary arrangements. In addition, MCOLES could implement a waiver system to address potential budget and staffing issues of the standard. Under such a system, law enforcement officers who did not work the required number of hours could continue to work by passing an exam demonstrating knowledge of and competence in critical areas, such as firearms and first aid.

**Response:** A waiver system would presume that police chiefs and sheriffs were not hiring qualified applicants, and also would defeat the purpose of setting a regular employment standard.

### **Opposing Argument**

The Michigan Commission on Law Enforcement Standards is charged with establishing standards through the administrative rules process. The Commission adopted the 520-hour standard based on more than two years of research and input from the law enforcement community; the standard was not decided arbitrarily. By enacting a standard through the legislative process, the bill would set a poor precedent. Law enforcement standards would be more appropriately established as they have been for the past several decades--through the rules process, which involves expertise and careful deliberation on the part of MCOLES.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce 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.