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COMMITTEE REPORT

April 20, 2016

**H. 3653**

Introduced by Reps. Pope, Quinn, Huggins, Allison, Spires, Hardee, Gagnon, Yow, Stavrinakis, H.A. Crawford, Kirby, McEachern, Anthony, Corley, Bales, Kennedy, Erickson, Hosey, Whitmire, Crosby, Southard, Tallon, McCoy, Burns, Atwater, Ballentine, Bannister, Bedingfield, Bernstein, R.L. Brown, Chumley, Clary, Collins, Felder, Finlay, Forrester, Funderburk, Gambrell, Hamilton, Herbkersman, Hicks, Hiott, Hixon, Hodges, Loftis, Long, V.S. Moss, Norman, Norrell, Pitts, Ridgeway, Riley, Sandifer, Simrill, G.R. Smith, Taylor, Thayer, Toole, Weeks, Wells, Willis, Mitchell, W.J. McLeod and Rivers

S. Printed 4/20/16--S. [SEC 4/21/16 4:21 PM]

Read the first time February 16, 2016.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3653) to amend Section 23‑1‑210, as amended, Code of Laws of South Carolina, 1976, relating to the temporary transfer of a law enforcement officer to work, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 20, Title 23 of the 1976 Code is amended to read:

“Chapter 20

Law Enforcement Assistance and Support Act

Section 23-20-10. This chapter may be cited as the ‘Law Enforcement Assistance and Support Act’.

Section 23-20-20. As used in this chapter:

(1) ‘Law enforcement agency’ means any state, county, municipal, or local law enforcement authority that enters into ~~a contractual~~ an agreement for the procurement of law enforcement support services.

(2) ‘Law enforcement provider’ means any in‑state or out‑of‑state law enforcement authority that provides law enforcement services to a law enforcement agency pursuant to this chapter.

(3) ‘Law enforcement services’ means any law enforcement assistance or service ~~for which a fee is paid based on a contractual agreement~~ performed by a certified law enforcement officer.

(4) ‘Mutual aid agreement’ means any agreement entered into on behalf of a law enforcement agency in this State for the purpose of providing the proper and prudent exercise of public safety functions across jurisdictional lines, including, but not limited to, multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations. Such agreements must not be permitted for the sole purpose of speed enforcement.

Section 23‑20‑30. (A) ~~The General Assembly recognizes the need to promote public safety and further recognizes that there may be situations where additional law enforcement officers are needed to maintain the public peace and welfare. Therefore, the General Assembly authorizes a law enforcement agency~~ Any county, incorporated municipality, or other political subdivision of this State ~~to~~ may enter into ~~contractual~~ mutual aid agreements ~~with other law enforcement providers~~ as may be necessary for the proper and prudent exercise of public safety functions. ~~Public safety functions include traditional public safety activities which are performed over a specified time period for patrol services, crowd control and traffic control, and other emergency service situations.~~ All ~~contractual~~ agreements ~~shall~~ must adhere to the requirements contained in Section 23‑20‑40.

(B) Nothing in this chapter may be construed to alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by South Carolina’s constitutional or statutory laws or established by the ordinances of South Carolina’s political subdivisions, except as expressly provided for in this chapter.

Section 23‑20‑40. (A) All ~~written contractual~~ mutual aid agreements for law enforcement services must be in writing and include, but may not be limited to, the following:

~~(a)~~(1) a statement of the specific services to be provided;

~~(b)~~(2) specific language dealing with financial agreements between the parties;

~~(c)~~(3) specification of the records to be maintained concerning the performance of services to be provided to the agency;

~~(d)~~(4) language dealing with the duration, modification, and termination of the ~~contract~~ agreement;

~~(e)~~(5) specific language dealing with the legal contingencies for any lawsuits or the payment of damages that arise from the provided services;

~~(f)~~(6) a stipulation as to which law enforcement authority maintains control over the law enforcement provider’s personnel; and

~~(g)~~(7) specific arrangements for the use of equipment and facilities.

(B) Except as provided in subsection (C), a mutual aid agreement entered into on behalf of a law enforcement authority must be approved by the appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision of this State. Agreements entered into are executed between governing bodies, and, therefore, may last until the agreement is terminated by a participating party of the agreement.

(C) An elected official whose office was created by the Constitution or by general law of this State is not required to seek approval from the elected official’s governing body in order to participate in mutual aid agreements.

(D) Provided the conditions and terms of the mutual aid agreements are followed, the chief executive officers of the law enforcement agencies in the concerned counties, incorporated municipalities, or other political subdivisions have the authority to send and receive such resources, including personnel, as may be needed to maintain the public peace and welfare.

(E) The officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of this State as the law enforcement agency requesting the services.

Section 23‑20‑60. The Governor, upon the request of a law enforcement authority or in his discretion, may by executive order, waive the requirement for a written ~~contractual~~ agreement for law enforcement services required by this chapter during a natural disaster or other emergency affecting public safety.”

SECTION 3. Sections 23-1-210, 23-1-215, and 23-20-50 of the 1976 Code are repealed.

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

GERALD MALLOY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

The Revenue and Fiscal Affairs Office is unable to determine the expenditure impact on state and local law enforcement agencies due to the permissive nature of the bill

**Explanation of Fiscal Impact**

**Explanation of Amendment by House Judiciary on February 11, 2016**

**State Expenditure**

House Bill 3653 amends various sections of Title 23, which relate to transfers or assignments of law enforcement officers. The bill authorizes a law enforcement agency to enter into mutual aid agreements or multijurisdictional task force agreements with other law enforcement providers as may be necessary in the interests of public safety. The bill also removes the requirement that a transfer of officers must be temporary in nature. Finally, the bill provides that prior to any transfer or assignment, the concerned law enforcement agencies shall enter into written agreements stating the conditions and terms of the employment of officers to be transferred or assigned.

Due to the permissive nature of this bill allowing county and municipal law enforcement agencies to transfer law enforcement officers to participating jurisdictions, the Revenue and Fiscal Affairs Office is unable to determine the expenditure impact on state law enforcement agencies.

**Local Expenditure**

Due to the permissive nature of this bill allowing county and municipal law enforcement agencies to transfer law enforcement officers to participating jurisdictions, the Revenue and Fiscal Affairs Office is unable to determine the expenditure impact on local government.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 23‑1‑210, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TEMPORARY TRANSFER OF A LAW ENFORCEMENT OFFICER TO WORK IN A MULTIJURISDICTIONAL TASK FORCE, SO AS TO AUTHORIZE A LAW ENFORCEMENT AGENCY TO ENTER INTO MUTUAL AID AGREEMENTS OR MULTIJURISDICTIONAL TASK FORCE AGREEMENTS WITH OTHER LAW ENFORCEMENT PROVIDERS FOR ANY LENGTH OF TIME, TO PROVIDE THAT A SHERIFF MAY ENTER INTO AN AGREEMENT AS LONG AS THE AGREEMENT DOES NOT OBLIGATE HIS COUNTY’S GOVERNING BODY TO ANY ADDITIONAL RESOURCES BEYOND THOSE APPROVED WITHIN HIS ANNUAL BUDGET, TO PROVIDE THE CONDITIONS UPON WHICH AN AGREEMENT MAY BE TERMINATED, TO PROVIDE CERTAIN LIMITS PLACED UPON A LOCAL GOVERNING BODY WHEN IT ATTEMPTS TO PROHIBIT A LAW ENFORCEMENT AGENCY FROM TRANSFERRING OR ASSIGNING LAW ENFORCEMENT OFFICERS TO OTHER JURISDICTIONS, AND TO SPECIFY THE DIFFERENCES BETWEEN AGREEMENTS ENTERED INTO PURSUANT TO THIS SECTION AND UNDER THE LAW ENFORCEMENT ASSISTANCE SUPPORT ACT; AND TO REPEAL SECTION 23‑1‑215, AS AMENDED, RELATING TO AGREEMENTS THAT MAY BE ENTERED INTO BETWEEN MULTIPLE LAW ENFORCEMENT JURISDICTIONS FOR THE PURPOSE OF CRIMINAL INVESTIGATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. section 23-1-210 of the 1976 Code, as last amended by act 3 of 2007, is further amended to read:

“~~(A)~~ ~~Any municipal or county law enforcement officer may be transferred or assigned on a temporary basis to work in law enforcement within multijurisdictional task forces established for the mutual aid and benefit of the participating jurisdictions, or in any other municipality or county in this State under the conditions set forth in this section, and when so transferred or assigned shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred or assigned.~~

~~(B)~~ ~~Prior to any transfer or assignment as authorized in subsection (A), the concerned municipalities or counties shall enter into written agreements stating the conditions and terms of the temporary employment of officers to be transferred or assigned. The bond for any officer transferred or assigned shall include coverage for his activity in the municipality or county to which he is transferred or assigned in the same manner and to the same extent provided by bonds of regularly employed officers of that municipality or county.~~

~~(C)~~ ~~Agreements made pursuant to subsection (B) shall provide that temporary transfers or assignments shall in no manner affect or reduce the compensation, pension, or retirement rights of transferred or assigned officers and such officers shall continue to be paid by the county or municipality where they are permanently employed, with the sending county or municipality being reimbursed for their services by the county or municipality to which they are transferred or assigned.~~

(A) In accordance with Article VIII, Section 13 of the South Carolina Constitution, the governing bodies of any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision to establish multijurisdictional task forces for the mutual aid and benefit of the participating jurisdictions. However, before any law enforcement services can be performed through a multijurisdictional task force, the concerned municipalities or counties must enter into written agreements stating the conditions and terms of the multijurisdictional task force.

(B) Agreements made pursuant to subsection (A) shall provide that the assignment of any officer to a multijurisdictional task force shall in no manner affect or reduce the compensation, pension, or retirement rights of any assigned officers and such officers shall continue to be paid by the county or municipality where they are permanently employed.

(C) Provided the conditions and terms of the agreements made pursuant to subsection (A) are followed, the chief executive officer of the law enforcement agency in the concerned municipality or county shall have the authority to oversee the multijurisdictional task force, manage multijurisdictional task force resources, assign officers to multijurisdictional task forces and determine the duration of his officer’s assignment to the multijurisdictional task force.

(D) As is provided in Section 23-13-10, deputy sheriffs serve at the pleasure of the sheriff. Such pleasure not only entails how long a deputy serves the sheriff, but also how the deputy serves the sheriff. Therefore, the contracting authority of a county of this state shall not be interpreted to limit the authority of or obligate the personnel of the elected sheriff of the county. In all cases, the sheriff shall maintain his statutorily provided authority to enforce the laws of this State in the county to which he has been elected.”

SECTION 2. Chapter 20, title 23 of the 1976 Code is amended to read:

“Chapter 20

Law Enforcement Assistance and Support Act

Section 23-20-10. This chapter may be cited as the ‘Law Enforcement Assistance and Support Act’.

Section 23-20-20. As used in this chapter:

(1) ‘Law enforcement agency’ means any state, county, municipal, or local law enforcement authority that enters into a contractual agreement for the procurement of law enforcement support services.

(2) ‘Law enforcement provider’ means any in‑state or out‑of‑state law enforcement authority that provides law enforcement services to a law enforcement agency pursuant to this chapter.

(3) ‘Law enforcement services’ means any law enforcement assistance or service ~~for which a fee is paid based on a contractual agreement~~ performed by a law enforcement officer as defined in Section 23-23-10(E)(1).

Section 23‑20‑30. (A) The General Assembly recognizes the need to promote public safety and further recognizes that there may be situations where additional law enforcement officers are needed to maintain the public peace and welfare. Therefore, the General Assembly authorizes ~~a law enforcement agency~~ any county incorporated municipality, or other political subdivision of this State to enter into contractual agreements ~~with other law enforcement providers~~ as may be necessary for the proper and prudent exercise of public safety functions. Public safety functions include traditional public safety activities which are performed over a specified time period for patrol services, crowd control and traffic control, and other emergency service situations. All contractual agreements shall adhere to the requirements contained in Section 23‑20‑40.

(B) Nothing in this chapter may be construed to alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by South Carolina’s constitutional or statutory laws or established by the ordinances of South Carolina’s political subdivisions, except as expressly provided for in this chapter.

Section 23‑20‑40. All written contractual agreements for law enforcement services must include, but may not be limited to, the following:

(a) a statement of the specific services to be provided;

(b) specific language dealing with financial agreements between the parties;

(c) specification of the records to be maintained concerning the performance of services to be provided to the agency;

(d) language dealing with the duration, modification, and termination of the contract;

(e) specific language dealing with the legal contingencies for any lawsuits or the payment of damages that arise from the provided services;

(f) a stipulation as to which law enforcement authority maintains control over the law enforcement provider’s personnel; and

(g) specific arrangements for the use of equipment and facilities.

Section 23‑20‑50. (A) ~~An agreement entered into pursuant to this chapter on behalf of a law enforcement authority must be approved by the appropriate state, county, or local law enforcement authority’s chief executive officer. A state law enforcement authority must provide a copy of the agreement to the Governor and the Director of the Department of Administration no later than one business day after executing the agreement. An agreement entered into with a local law enforcement authority pursuant to this chapter must be approved by the governing body of each jurisdiction. For agreements entered into prior to June 1, 2000, the agreement may be ratified by the governing body of each jurisdiction.~~

In accordance with Article VIII, Section 13 of the South Carolina Constitution, the governing bodies of any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof. Therefore, a contract entered into pursuant to this chapter on behalf of a law enforcement authority must be approved by the appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision of this State. Contracts entered into pursuant to this chapter are executed between governing bodies, and, therefore, may last in perpetuity or until the contract is terminated by a participating party of the contract.

(B) As is provided in Section 23-13-10, deputy sheriffs serve at the pleasure of the sheriff. Such pleasure not only entails how long a deputy serves the sheriff, but also how the deputy serves the sheriff. Therefore, the contracting authority of a county of this State shall not be interpreted to limit the authority of or obligate the personnel of the elected sheriff of the county. In all cases, the sheriff shall maintain his statutorily provided authority to enforce the laws of this State in the county to which he has been elected.

(C) Provided the conditions and terms of the contracts made pursuant to Section 23-20-40 are followed, the chief executive officers of the law enforcement agencies in the concerned counties, incorporated municipalities, or other political subdivisions shall have the authority to send and receive such resources, including personnel, as may be needed to maintain the public peace and welfare.

~~(B)~~(D) The officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of South Carolina as the law enforcement agency contracting for the services.

Section 23‑20‑60. The Governor, upon the request of a law enforcement authority or in his discretion, may by executive order, waive the requirement for a written contractual agreement for law enforcement services required by this chapter during a natural disaster or other emergency affecting public safety.”

SECTION 3. Section 23-1-215 of the 1976 Code is repealed.

SECTION 4. This act takes effect upon approval by the Governor.

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