COMMITTEE REPORT

April 25, 2018

**H. 4479**

Introduced by Reps. Tallon, Hixon and W. Newton

S. Printed 4/25/18--S. [SEC 4/26/18 12:12 PM]

Read the first time March 1, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4479) to amend Section 23‑23‑80, as amended, Code of Laws of South Carolina, 1976, relating to the powers and duties of the South Carolina Law Enforcement, etc., respectfully

**REPORT:**

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

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by the House of Representatives on February 28, 2018**

**State Expenditure**

This bill expands the powers and duties of the South Carolina Law Enforcement Training Council (LETC). The council may appoint attorneys employed by the South Carolina Criminal Justice Academy (CJA) to serve as hearing officers for contested case hearings, and those attorneys may submit recommendations to the LETC. The bill also prohibits a person having a pending allegation of misconduct from being employed as a law enforcement officer or telecommunications officer, having the authority of a law enforcement officer, performing any duties of a law enforcement officer, or exercising the power of arrest until the LETC or an appellate court has issued a decision authorizing the person’s employment in those areas.

The CJA will send notice via certified mail to persons against whom allegations of misconduct have been made of their right to a contested case hearing. A contested case hearing must be requested within sixty days of receipt of the notice. If a contested case hearing is not requested within that timeframe, the LETC will order that the person allegedly guilty of misconduct be denied law enforcement or telecommunications certification. When a contested case hearing is requested, the parties will be notified via certified mail of the hearing officer’s recommendation to the full LETC. Motions in opposition to the recommendation must be filed with the LETC within fifteen days of receipt of the notice. Parties who support the recommendation who receive a motion in opposition have ten days within which to file a motion in support with the LETC. The LETC is responsible for reviewing the CJA attorneys’ recommendations, hearing transcript, and exhibits and will issue a final agency decision at any time other than at a quarterly or special meeting.

In addition, this bill requires the CJA to schedule contested case hearings within sixty days of receiving a request for a hearing. It also prohibits allegations of law enforcement certification misconduct from being accepted in an original personnel change in status form, amended form, or any other form more than thirty days after an officer’s separation from an agency except under extenuating circumstances. Further, it requires that all information concerning separation of law enforcement officers be submitted by a certified law enforcement entity and specifies that the willful submission of false or misleading statements to the CJA or its representatives constitutes law enforcement certification misconduct that must be addressed by the LETC.

**Law Enforcement Training Council (LETC).** This bill enables the LETC to appoint Criminal Justice Academy attorneys to serve as hearing officers for contested case hearings. If the number of cases to be heard increases as a result of the bill, the LETC will incur additional court reporting fees that it can manage within current resources. However, if the number of cases to be heard significantly increases as a result of the bill, the LETC may entail the appointment of an additional attorney. Therefore, the expenditure impact on the general fund is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 23‑23‑80, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS AND DUTIES OF THE SOUTH CAROLINA LAW ENFORCEMENT TRAINING COUNCIL, SO AS TO PROVIDE THAT THE LAW ENFORCEMENT TRAINING COUNCIL IS AUTHORIZED TO APPOINT ATTORNEYS EMPLOYED BY THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY TO SIT AS HEARING OFFICERS FOR CONTESTED CASE HEARINGS; AND BY ADDING SECTION 23‑23‑150, SO AS TO PROVIDE THAT NO PERSON WHO HAS A PENDING ALLEGATION OF MISCONDUCT MAY BE EMPLOYED AS A LAW ENFORCEMENT OFFICER OR AS A TELECOMMUNICATIONS OPERATOR, MAY HAVE THE AUTHORITY OF A LAW ENFORCEMENT OFFICER, PERFORM ANY DUTIES OF A LAW ENFORCEMENT OFFICER, OR EXERCISE THE POWER OF ARREST UNTIL THE LAW ENFORCEMENT TRAINING COUNCIL OR AN APPELLATE COURT HAS ISSUED A DECISION AUTHORIZING THE PERSON TO BE EMPLOYED IN THOSE AREAS, TO PROVIDE THAT A PERSON AGAINST WHOM AN ALLEGATION OF MISCONDUCT HAS BEEN RECEIVED BY THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY SHALL BE NOTIFIED BY CERTIFIED MAIL OF THE ALLEGATION OF MISCONDUCT AND HIS RIGHT TO A CONTESTED CASE HEARING, TO PROVIDE THAT A PERSON AGAINST WHOM AN ALLEGATION OF MISCONDUCT HAS BEEN RECEIVED BY THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY MUST REQUEST A CONTESTED CASE HEARING WITHIN SIXTY DAYS AFTER RECEIPT OF THE ALLEGATION OF MISCONDUCT AND RIGHT TO A CONTESTED CASE HEARING, AND TO PROVIDE FOR THE PROCEDURES OF A CONTESTED CASE HEARING.

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

SECTION 1. Section 23‑23‑80 of the 1976 Code, as last amended by Act 46 of 2017, is further amended by adding the following appropriately numbered item:

“( ) appoint attorneys employed by the South Carolina Criminal Justice Academy to sit as hearing officers for contested case hearings. The attorneys are authorized to submit hearing officers’ recommendations to the council.”

SECTION 2. Chapter 23, Title 26 of the 1976 Code is amended by adding:

“Section 23‑23‑150. (A) No person who has a pending allegation of misconduct, as this term is defined in the Law Enforcement Training Council regulations, may be employed as a law enforcement officer or as a telecommunications operator; have the authority of a law enforcement officer; perform any duties of a law enforcement officer, including those duties involving the control and direction of members of the public, detainees, or prisoners; or exercise the power of arrest until:

(1) the Law Enforcement Training Council has issued a final agency decision that the person may be granted certification, be granted certification with probation, be granted certification with any additional requirements deemed just and proper by the council, or be granted certification with a public reprimand; or

(2) an appellate court issues a ruling that the Law Enforcement Training Council shall issue the person his law enforcement certification or telecommunications certification and the Law Enforcement Training Council or Criminal Justice Academy has not appealed the ruling.

(B) Every law enforcement candidate, law enforcement officer, or telecommunications operator is required to notify the South Carolina Criminal Justice Academy of his current address.

(C) A person against whom an allegation of misconduct has been received by the South Carolina Criminal Justice Academy shall be notified by certified mail of the allegation of misconduct and his right to a contested case hearing.

(D) A person against whom an allegation of misconduct has been received by the South Carolina Criminal Justice Academy has sixty days to request a contested case hearing after receipt of the allegation of misconduct and right to a contested case hearing. A person who fails to request a contested case hearing within the time allowed shall be deemed to have waived his right to a contested case hearing. The Law Enforcement Training Council shall proceed to enter a final agency decision to permanently deny the person from being issued his law enforcement certification or telecommunications certification. Hearings must be scheduled and conducted as expeditiously and efficiently as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The South Carolina Criminal Justice Academy shall schedule a contested hearing within sixty days of receiving a request for a hearing.

(E) The parties will be notified via certified mail of the hearing officer’s recommendation to the full Law Enforcement Training Council. A party opposing the recommendation may file a motion in opposition of the hearing officer’s recommendation within fifteen days of receipt. Within ten days of receipt of the motion in opposition, a party supporting the recommendation may file a motion in support of the hearing officer’s recommendation. These motions shall be submitted to the full Law Enforcement Training Council, along with the recommendation, hearing transcript, and exhibits. The Law Enforcement Training Council may schedule oral arguments for the next quarterly scheduled meeting. After reviewing the motions, recommendation, hearing transcript, and exhibits, the council may vote and issue a final agency decision at any time other than at a quarterly or special meeting.

(F) An allegation of law enforcement certification misconduct shall not be accepted in an original personnel change in status form, amended form, or any other form more than thirty days after an officer’s separation from an agency, unless extenuating circumstances exist, as determined by the Law Enforcement Training Council.

(G) All information submitted by a law enforcement entity to the Criminal Justice Academy related to separation of law enforcement officers must be submitted by a certified law enforcement officer at the entity.

(H) In addition to other actions outlined in regulations promulgated by the Law Enforcement Training Council, wilful submission of false, misleading, incomplete, deceitful, or incorrect statements to the Criminal Justice Academy, or its representatives, constitutes law enforcement certification misconduct and must be addressed as other allegations of misconduct are addressed by the council.”

SECTION 3. This act takes effect upon approval by the Governor.

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