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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2322

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives McDonald, Delvin, Kristiansen, Pearson, Lovick and Shabro)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to requiring prehire screening for law enforcement  
2 applicants; amending RCW 43.101.080, 43.101.095, 43.101.105, and  
3 43.43.020; and adding a new section to chapter 43.101 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.101.080 and 2001 c 166 s 1 are each amended to read  
6 as follows:

7 The commission shall have all of the following powers:

8 (1) To meet at such times and places as it may deem proper;

9 (2) To adopt any rules and regulations as it may deem necessary;

10 (3) To contract for services as it deems necessary in order to  
11 carry out its duties and responsibilities;

12 (4) To cooperate with and secure the cooperation of any department,  
13 agency, or instrumentality in state, county, and city government, and  
14 other commissions affected by or concerned with the business of the  
15 commission;

16 (5) To do any and all things necessary or convenient to enable it  
17 fully and adequately to perform its duties and to exercise the power  
18 granted to it;

1 (6) To select and employ an executive director, and to empower him  
2 to perform such duties and responsibilities as it may deem necessary;

3 (7) To assume legal, fiscal, and program responsibility for all  
4 training conducted by the commission;

5 (8) To establish, by rule and regulation, standards for the  
6 training of criminal justice personnel where such standards are not  
7 prescribed by statute;

8 (9) To own, establish, and operate, or to contract with other  
9 qualified institutions or organizations for the operation of, training  
10 and education programs for criminal justice personnel and to purchase,  
11 lease, or otherwise acquire, subject to the approval of the department  
12 of general administration, a training facility or facilities necessary  
13 to the conducting of such programs;

14 (10) To establish, by rule and regulation, minimum curriculum  
15 standards for all training programs conducted for employed criminal  
16 justice personnel;

17 (11) To review and approve or reject standards for instructors of  
18 training programs for criminal justice personnel, and to employ  
19 personnel on a temporary basis as instructors without any loss of  
20 employee benefits to those instructors;

21 (12) To direct the development of alternative, innovate, and  
22 interdisciplinary training techniques;

23 (13) To review and approve or reject training programs conducted  
24 for criminal justice personnel and rules establishing and prescribing  
25 minimum training and education standards recommended by the training  
26 standards and education boards;

27 (14) To allocate financial resources among training and education  
28 programs conducted by the commission;

29 (15) To allocate training facility space among training and  
30 education programs conducted by the commission;

31 (16) To issue diplomas certifying satisfactory completion of any  
32 training or education program conducted or approved by the commission  
33 to any person so completing such a program;

34 (17) To provide for the employment of such personnel as may be  
35 practical to serve as temporary replacements for any person engaged in  
36 a basic training program as defined by the commission;

37 (18) To establish rules and regulations recommended by the training  
38 standards and education boards prescribing minimum standards relating

1 to physical, mental and moral fitness which shall govern the  
2 recruitment of criminal justice personnel where such standards are not  
3 prescribed by statute or constitutional provision;

4 (19) To require that each applicant that has been offered a  
5 conditional offer of employment as a fully commissioned peace officer  
6 or a fully commissioned reserve officer to take and successfully pass  
7 a psychological examination and a polygraph test or similar assessment  
8 procedure as administered by county, city, or state law enforcement  
9 agencies as a condition of employment as a peace officer. The  
10 employing county, city, or state law enforcement agency may require  
11 that each peace officer or reserve officer who is required to take a  
12 psychological examination and a polygraph or similar test pay a portion  
13 of the testing fee based on the actual cost of the test or four hundred  
14 dollars, whichever is less. County, city, and state law enforcement  
15 agencies may establish a payment plan if they determine that the peace  
16 officer or reserve officer does not readily have the means to pay for  
17 his or her portion of the testing fee.

18 All rules and regulations adopted by the commission shall be  
19 adopted and administered pursuant to the administrative procedure act,  
20 chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

21 **Sec. 2.** RCW 43.101.095 and 2001 c 167 s 2 are each amended to read  
22 as follows:

23 (1) As a condition of continuing employment as peace officers, all  
24 Washington peace officers: (a) Shall timely obtain certification as  
25 peace officers, or timely obtain certification or exemption therefrom,  
26 by meeting all requirements of RCW 43.101.200, as that section is  
27 administered under the rules of the commission, as well by meeting any  
28 additional requirements under this chapter; and (b) shall maintain the  
29 basic certification as peace officers under this chapter. As a  
30 condition of continuing employment for any applicant that has been  
31 offered a conditional offer of employment as a fully commissioned peace  
32 officer or a reserve officer after the effective date of this act,  
33 including any person whose certification has lapsed as a result of a  
34 break of more than twenty-four consecutive months in the officer's  
35 service as a fully commissioned peace officer or reserve officer, he or  
36 she shall successfully pass a psychological examination and a polygraph  
37 or similar test as administered by the county, city, or state law

1 enforcement agency. The commission shall certify peace officers who  
2 have satisfied, or have been exempted by statute or by rule from, the  
3 basic training requirements of RCW 43.101.200 on or before January 1,  
4 2002. Thereafter, the commission may revoke certification pursuant to  
5 this chapter.

6 (2) The commission shall allow a peace officer to retain status as  
7 a certified peace officer as long as the officer: (a) Timely meets the  
8 basic law enforcement training requirements, or is exempted therefrom,  
9 in whole or in part, under RCW 43.101.200 or under rule of the  
10 commission; (b) meets or is exempted from any other requirements under  
11 this chapter as administered under the rules adopted by the commission;  
12 (c) is not denied certification by the commission under this chapter;  
13 and (d) has not had certification revoked by the commission.

14 (3) As a prerequisite to certification, as well as a prerequisite  
15 to pursuit of a hearing under RCW 43.101.155, a peace officer must, on  
16 a form devised or adopted by the commission, authorize the release to  
17 the commission of his or her personnel files, termination papers,  
18 criminal investigation files, or other files, papers, or information  
19 that are directly related to a certification matter or decertification  
20 matter before the commission.

21 **Sec. 3.** RCW 43.101.105 and 2001 c 167 s 3 are each amended to read  
22 as follows:

23 (1) Upon request by a peace officer's employer or on its own  
24 initiative, the commission may deny or revoke certification of any  
25 peace officer, after written notice and hearing, if a hearing is timely  
26 requested by the peace officer under RCW 43.101.155, based upon a  
27 finding of one or more of the following conditions:

28 ~~((1))~~ (a) The peace officer has failed to timely meet all  
29 requirements for obtaining a certificate of basic law enforcement  
30 training, a certificate of basic law enforcement training equivalency,  
31 or a certificate of exemption from the training;

32 ~~((2))~~ (b) The peace officer has knowingly falsified or omitted  
33 material information on an application for training or certification to  
34 the commission;

35 ~~((3))~~ (c) The peace officer has been convicted at any time of a  
36 felony offense under the laws of this state or has been convicted of a  
37 federal or out-of-state offense comparable to a felony under the laws

1 of this state; except that if a certified peace officer was convicted  
2 of a felony before being employed as a peace officer, and the  
3 circumstances of the prior felony conviction were fully disclosed to  
4 his or her employer before being hired, the commission may revoke  
5 certification only with the agreement of the employing law enforcement  
6 agency;

7 ~~((4))~~ (d) The peace officer has been discharged for disqualifying  
8 misconduct, the discharge is final, and some or all of the acts or  
9 omissions forming the basis for the discharge proceedings occurred on  
10 or after January 1, 2002;

11 ~~((5))~~ (e) The peace officer's certificate was previously issued  
12 by administrative error on the part of the commission; or

13 ~~((6))~~ (f) The peace officer has interfered with an investigation  
14 or action for denial or revocation of certificate by: ~~((a))~~ (i)  
15 Knowingly making a materially false statement to the commission; or  
16 ~~((b))~~ (ii) in any matter under investigation by or otherwise before  
17 the commission, tampering with evidence or tampering with or  
18 intimidating any witness.

19 (2) After the effective date of this act, the commission shall deny  
20 certification of any applicant that has lost his or her certification  
21 as result of a break in service of more than twenty-four consecutive  
22 months if that applicant failed to successfully pass the psychological  
23 examination and the polygraph test or similar assessment procedure, as  
24 administered by county, city, or state law enforcement agencies.

25 NEW SECTION. Sec. 4. A new section is added to chapter 43.101 RCW  
26 to read as follows:

27 Before a person may be appointed or hired to act as a fully  
28 commissioned peace officer or a reserve officer, the person shall meet  
29 the minimum standards for employment with the hiring local law  
30 enforcement agency, including: (1) Successful completion of a  
31 psychological examination and polygraph examination administered by  
32 county, city, or state law enforcement agencies; and (2) meeting the  
33 requirements of RCW 43.101.200.

34 **Sec. 5.** RCW 43.43.020 and 1983 c 144 s 1 are each amended to read  
35 as follows:

1 The governor, with the advice and consent of the senate, shall  
2 appoint the chief of the Washington state patrol, determine his  
3 compensation, and may remove him at will.

4 The chief shall appoint a sufficient number of competent persons to  
5 act as Washington state patrol officers, may remove them for cause, as  
6 provided in this chapter, and shall make promotional appointments,  
7 determine their compensation, and define their rank and duties, as  
8 hereinafter provided. Before a person may be appointed to act as a  
9 Washington state patrol officer, the person shall meet the minimum  
10 standards for employment with the Washington state patrol, including  
11 successful completion of a psychological examination and polygraph  
12 examination or similar assessment procedure administered by the chief  
13 or his or her designee.

14 The chief may appoint employees of the Washington state patrol to  
15 serve as special deputies, with such restricted police authority as the  
16 chief shall designate as being necessary and consistent with their  
17 assignment to duty. Such appointment and conferral of authority shall  
18 not qualify said employees for membership in the Washington state  
19 patrol retirement system, nor shall it grant tenure of office as a  
20 regular officer of the Washington state patrol.

21 The chief may personally appoint, with the consent of the state  
22 treasurer, employees of the office of the state treasurer who are  
23 qualified under the standards of the criminal justice training  
24 commission, or who have comparable training and experience, to serve as  
25 special deputies. The law enforcement powers of any special deputies  
26 appointed in the office of the state treasurer shall be designated by  
27 the chief and shall be restricted to those powers necessary to provide  
28 for statewide security of the holdings or property of or under the  
29 custody of the office of the state treasurer. These appointments may  
30 be revoked by the chief at any time and shall be revoked upon the  
31 written request of the state treasurer or by operation of law upon  
32 termination of the special deputy's employment with the office of the  
33 state treasurer or thirty days after the chief who made the appointment  
34 leaves office. The chief shall be civilly immune for the acts of such  
35 special deputies. Such appointment and conferral of authority shall  
36 not qualify such employees for membership in the Washington state

1 patrol retirement system, nor shall it grant tenure of office as a  
2 regular officer of the Washington state patrol.

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