

PROPOSED AMENDMENTS TO (DRAFT NO 1.1 – S.221) AS REVIEWED ON 2/12/2016

SUBMITTED BY: MICHAEL DAVIDSON

EMPLOYED BY: INVESTIGATOR, DEPARTMENT OF LIQUOR CONTROL

FEBRUARY 16, 2016

Page 3 – Line 20

Insert language to include member from DMV, Game Wardens, and DLC, as follows:

(C)(1) – A member the State employed law enforcement employees (Game Wardens, DMV, DLC) represented by VSEA, or its successor entity, and elected by the law enforcement officer members.

Reasoning: This gives representation to the State Employed Law Enforcement Officers not represented by the Vermont Troopers Association.

Page 19 – Line 7, 8

(B) -Delete (The VSP internal affairs process).

Reasoning: VSP program should meet or exceed the minimum standards established by this subchapter. This will not change that statute, just assure the VSP internal affairs program that is adopted as described in that statute meets the minimum requirements established in this Bill. There is no need to reference the statute in this section.

Page 19 – line 7, Add:

(B) – Add (State Employed Law Enforcement Officers)

(B)(1) Law Enforcement Agencies that are employed by the State of Vermont shall, through appropriate labor relations bargaining, establish an effective internal affairs program policy that meets the requirements of this subdivision.

(B)(2) Misconduct investigations, as defines in section 2381 of this subchapter, of a Law Enforcement Officers employed by the State of Vermont shall be conducted in accordance with the established policy described in (B)(1).

(B)(3) The provisions of this subchapter shall take effect upon implementation of the policies listed in (B)(1). The State and the law enforcement officers are encouraged to negotiate a side letter agreement on the topics listed in this subchapter, pending contract negotiations.

Reasoning: This will allow for the VSP to continue with their program, as long as the minimums requirements of this section is achieved. It will also address a conflict with policies/statues for the other state law enforcement agencies that are now required to us the Department of Human Resources for misconduct investigations. Finally, this encourages labor/management to adopt the necessary agreements to implement this Bill.

Page 20 - Lines 13 – 15

Delete (1) and replace, as follows:

- (1) The agency receives a valid complaint of any Category A violation as defined by Section 2381 of this subsection, as determined in accordance with the Internal Affairs Policy.

Reason: This reporting requirement will eliminate the subjective “as deemed appropriate by the executive officer”, and require an established policy be followed to determine validity.

Page 21 – line 14 - 16:

Change to:

- (d) Vermont State Police: Title 20 V.S.A. 1923 shall be amended to include all reporting requirement as defined in this subchapter.

Reasoning: This will create the same reporting requirements for all law enforcement agencies.

Page 21 Line 18

Change language to read:

- (1)(A) Upon making a conditional offer of employment, the executive officer shall confirm, with the Council, the status of certification for the law enforcement officer applicant.

Reasoning: This change will protect an applicant from being denied employment by an agency who may be prejudiced by any Investigation that may need to be undertaken. The intent here is to afford an accused due process without interfering with their right to employment.

Page 22, Lines 1-4

Delete – Reasoning: covered in (1)(A) above.

Page 22, Lines 5-9

Change to: (2) The Council will notify the hiring agency if the law enforcement officer is certified or not certified. If the Council determines that the applicant was the subject of a complaint requiring a valid investigation, and no valid investigation was conducted, the Council may withhold certification pending a valid investigation. The matter shall be referred back to the originating agency for investigation in accordance with their established internal affairs policy, or as prescribed by this subchapter. The applicant shall be granted all the same rights and privileges as if they were still employed with the Investigating agency.

Reasoning: This will help prevent prejudicing the job offer from a department. Since and misconduct should have been reported and investigated by the original employer, and the procedures were not followed by the executive officer, in fairness to the officer, as it was no fault of theirs the investigation did not happen, they should be given the rights under their original employment agreements. This should help achieve the goal of this Bill in preventing agencies from avoiding investigations by having the officer leave.

Page 22, line 10

Add paragraph (e), as follows:

(e) An agency executive officer shall provide a copy of the agencies adopted effective internal affairs program and any associated policies to the Council, within 10 days of adoption, modification or prior to conducting an Investigation for a violation of section 2381 of this subchapter.

Reasoning: This provides the Council the ability to review existing policies to assure they meet the standards of this Bill. In addition, it prevents an agency from altering their policies in select cases.

Page 22, Line 12:

Insert language as underlined:

...against a law enforcement officer for a violation as defined in section 2381 of this subchapter...

Reasoning: The Council should only be handling cases as identified in Categories A,B,C

Page 22, Line 20:

Delete: (3): report of category B offense - *Reason: This contradicts page 23 Lines 9-12*

Page 23, Lines 2-8:

Change paragraph to read:

If an administrative, criminal investigation or labor relations process about a violation of any category A or a second violation of a Category B allegation is ongoing, to include all appeals and labor contract or employment processes, the Council shall defer its investigation or hearing until any final disposition is concluded from the appropriate jurisdiction. In cases the Executive Director of the Council determines place the public at risk if the officer is not placed on administrative leave or terminated pending an investigation, the Executive Director shall request of the Executive Officer from the agency, justification for failure to take either action. If the Executive Director is not satisfied with a response, the reasons shall be documented and forwarded to the civilian oversight of that agency, or the highest political official having jurisdiction of the Agency.

Reasoning: The decertification process is based on final conclusions of misconduct. To have a hearing or investigation running simultaneously may interfere with the officer's due process rights. The potential for abuse of this separate administrative process could easily become a problem. Since one of the primary purposes of this Bill is to stop the abuses by leadership in allowing misconduct to go uncorrected, the addition of giving the authority to the ED to question lace of action that places the public in jeopardy. The purpose of notifying the civilian oversight or highest authority is to assure the agency head's supervision is official notified. This also eliminates biasing the Council for the later hearing.

Page 25 Line 1

Change word:

(4) Suspension of certification and ~~Privilege~~ Right of employment as an officer for a period not to exceed two years.

Reasoning: employment is a right, not a privilege

Page 25 Line 9

Insert: In accordance with state rule-making process.

Reasoning: Rules effect approximately 1700 officers and should be vetted through the proper rulemaking process. (this might have been the intent, but was unclear).

Page 25 line 5

2386 Confidentiality:

Delete Lines 6 and 7, add the following:

- (1) Records of internal investigations, to include Council investigations, shall be confidential, except:
- (2) The civilian oversight committee shall have full and free access to such records; and
- (3) The executive officer shall deliver such materials from the records of an internal investigation as may be necessary to appropriate prosecutorial authorities having jurisdiction; and
- (4) The civilian oversight committee shall, in its discretion, be entitled to report to such authorities as it may deem appropriate, or to the public, or to both, to ensure that proper action is taken in each case.
- (5) In the absence of a civilian oversight committee, a commissioner, side judges, or municipal elected governing body shall assume the role.

Reasoning: This language is similar to title 20 VSA 1923 under the internal affairs program for the VSP, modified to be applicable to all law enforcement.

Page 27, line 11, 12

Line 11 & 12 – Delete, Add:

(15) – A member the State employed law enforcement employees (Game Wardens, DMV, DLC) represented by VSEA, or its successor entity, and elected by the law enforcement officer members.

Reasoning: This gives representation to the state law enforcement officers not represented by the troopers association.

Page 28, Line 3

Add paragraph (C)(1) as follows:

The Board shall develop a policy for an effective internal affairs program and professional misconduct, to assist agencies in implementing effective policies and labor contracts. The Council may use the policies as a reference when conducting investigations and determining sanctions in cases where an agency was not able to conduct their own internal affairs program.

Reasoning: this will establish a standardized policy that may be adopted by agencies. It also allows for fairness to officers who's agencies have not adopted an effective internal affairs program.