

S.131

An act relating to State's Attorneys and sheriffs.

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Retirement and Benefits \* \* \*

Sec. 1. 3 V.S.A. § 455 is amended to read:

§ 455. DEFINITIONS

(a) As used in this subchapter:

\* \* \*

(9) "Employee" shall mean:

(A) Any regular officer or employee of the Vermont Historical Society or ~~in~~ a department other than a person included under subdivision (B) of this subdivision (9), who is employed for not less than 40 calendar weeks in a year. "Employee" includes deputy State's Attorneys, victim advocates employed by a State's Attorney pursuant to 13 V.S.A. § 5306, secretaries employed by a State's Attorney pursuant to 32 V.S.A. § 1185, and other positions created within the State's Attorneys' offices that meet the eligibility requirements for membership in the Retirement System.

(B) Any regular officer or employee of the Department of Public Safety assigned to police and law enforcement duties, including the Commissioner of Public Safety appointed before July 1, 2001; but, irrespective

of the member's classification, shall not include any member of the General Assembly as such, any person who is covered by the Vermont Teachers' Retirement System, any person engaged under retainer or special agreement or C beneficiary employed by the Department of Public Safety for not more than 208 hours per year, or any person whose principal source of income is other than State employment. In all cases of doubt, the Retirement Board shall determine whether any person is an employee as defined in this subchapter. Also included under this subdivision are employees of the Department of Liquor Control who exercise law enforcement powers, employees of the Department of Fish and Wildlife assigned to law enforcement duties, motor vehicle inspectors, full-time deputy sheriffs compensated by the State of Vermont whose primary function is transports, full-time members of the Capitol Police force, investigators employed by the Criminal Division of the Office of the Attorney General, Department of State's Attorneys, Department of Health, or Office of the Secretary of State, who have attained Level III law enforcement officer certification from the Vermont Criminal Justice Training Council, who are required to perform law enforcement duties as the primary function of their employment, and who may be subject to mandatory retirement permissible under 29 U.S.C. § 623(j), who are first included in membership of the system on or after July 1, 2000. Also included under this

subdivision are full-time firefighters employed by the State of Vermont and the Defender General.

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Sec. 2. 3 V.S.A. § 631 is amended to read:

§ 631. GROUP INSURANCE FOR STATE EMPLOYEES; SALARY  
DEDUCTIONS FOR INSURANCE, SAVINGS PLANS, AND  
CREDIT UNIONS

(a)(1) The Secretary of Administration may contract on behalf of the State with any insurance company or nonprofit association doing business in this State to secure the benefits of franchise or group insurance. Beginning July 1, 1978, the terms of coverage under the policy shall be determined under section 904 of this title, but it may include:

\* \* \*

(2)(A)(i) The As used in this section, the term “employees” as used in this section shall include among others includes any class or classes of elected or appointed officials, but it State’s Attorneys, sheriffs, employees of State’s Attorney’s offices whose compensation is administered through the State of Vermont payroll system, except contractual and temporary employees, and deputy sheriffs paid by the State of Vermont pursuant to 24 V.S.A. § 290(b). The term “employees” shall not include members of the General Assembly as such, nor shall it include any person rendering service on a retainer or fee

basis, members of boards or commissions, or persons other than employees of the Vermont Historical Society, the Vermont Film Corporation, the Vermont State Employees' Credit Union, Vermont State Employees' Association, and the Vermont Council on the Arts, whose compensation for service is not paid from the State Treasury, ~~nor shall it include~~ or any elected or appointed official unless the official is actively engaged in and devoting substantially full-time to the conduct of the business of his or her public office.

(ii) For purposes of group hospital-surgical-medical expense insurance, the term "employees" shall include employees as defined in subdivision (i) of this subdivision (2)(A) and former employees as defined in this subdivision who are retired and are receiving a retirement allowance from the Vermont State Retirement System or the State Teachers' Retirement System of Vermont and, for the purposes of group life insurance only, are retired on or after July 1, 1961, and have completed 20 creditable years of service with the State before their retirement dates and are insured for group life insurance on their retirement dates.

(iii) For purposes of group hospital-surgical-medical expense insurance only, the term "employees" shall include employees as defined in subdivision (i) of this subdivision (2)(A) and employees who are receiving a retirement allowance based upon their employment with the Vermont State Employees' Association, the Vermont State Employees' Credit Union, the

Vermont Council on the Arts, as long as they are covered as active employees on their retirement date, and:

~~(i)~~(I) they have at least 20 years of service with that employer; or

~~(ii)~~(II) have attained 62 years of age, and have at least 15 years of service with that employer.

\* \* \*

\* \* \* Collective Bargaining \* \* \*

Sec. 3. 3 V.S.A. § 902 is amended to read:

§ 902. DEFINITIONS

As used in this chapter:

\* \* \*

(2) “Collective bargaining;” or “bargaining collectively” means the process of negotiating terms, tenure, or conditions of employment between the State of Vermont, the Vermont State Colleges, ~~or~~ the University of Vermont, or the Department of State’s Attorneys and Sheriffs and representatives of employees with the intent to arrive at an agreement ~~which~~ that, when reached, shall be reduced to writing.

\* \* \*

(5) “State employee” means any individual employed on a permanent or limited status basis by the State of Vermont, the Vermont State Colleges, ~~or~~ the University of Vermont, or the State’s Attorneys’ offices, including permanent

part-time employees, and an individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, but excluding an individual:

(A) exempt or excluded from the State classified service under the provisions of section 311 of this title, except that the State Police in the Department of Public Safety, ~~and~~ employees of the Defender General, excluding attorneys employed directly by the Defender General and attorneys contracted to provide legal services; deputy State's Attorneys; and employees of State's Attorneys' offices are included within the meaning of "State employee";

\* \* \*

(7) "Employer" means the State of Vermont, excluding the Legislative and Judiciary Departments, represented by the Governor or ~~the Governor's~~ designee, the Office of the Defender General represented by the Defender General or ~~the Defender General's~~ designee, ~~and~~ Vermont State Colleges, represented by the Chancellor or ~~the Chancellor's~~ designee, and the University of Vermont, represented by the President or ~~the President's~~ designee. With respect to employees of State's Attorneys' offices, "employer" means the Department of State's Attorneys and Sheriffs represented by the Executive Director or designee.

\* \* \*

(10) "Person;" includes one or more individuals, the State of Vermont, Vermont State Colleges, University of Vermont, Department of State's Attorneys and Sheriffs, employee organizations, labor organizations, partnerships, corporations, legal representatives, trustees, or any other natural or legal entity whatsoever.

\* \* \*

Sec. 4. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters ~~which~~ that are prescribed or controlled by statute. ~~Such~~ The matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include:

- (1) wages, salaries, benefits, and reimbursement practices relating to necessary expenses and the limits of reimbursable expenses;
- (2) minimum hours per week;
- (3) working conditions;
- (4) overtime compensation and related matters;
- (5) leave compensation and related matters;
- (6) reduction-in-force procedures;

(7) grievance procedures, including whether an appeal to the Vermont Labor Relations Board or binding arbitration, or both, will constitute the final step in a grievance procedure;

(8) terms of coverage and amount of employee financial participation in insurance programs, except that the Department of State's Attorneys and Sheriffs and the deputy State's Attorneys and other employees of the State's Attorneys' offices shall not bargain in relation to terms of coverage;

(9) rules ~~and regulations~~ for personnel administration, except the following: rules ~~and regulations~~ relating to persons exempt from the classified service under section 311 of this title and rules ~~and regulations~~ relating to applicants for employment in State service and employees in an initial probationary status, including any extension or extensions thereof, provided such the rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition; and

(10) the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

(b) This chapter shall not be construed to be in derogation of, or contravene the spirit and intent of the merit system principles and the personnel laws.

Sec. 5. 3 V.S.A. § 905 is amended to read:

§ 905. MANAGEMENT RIGHTS

(a) The Governor, or ~~a person or persons designated by the Governor,~~ designee for the State of Vermont, ~~and the provost, Chancellor or a person or persons designated by the provost~~ designee for Vermont State Colleges ~~and,~~ the President, or ~~a person or persons designated by the President~~ designee for the University of Vermont, and the Executive Director or designee for the Department of State's Attorneys and Sheriffs shall act as the employer representatives in collective bargaining negotiations and administration. The representative shall be responsible for ~~insuring~~ ensuring consistency in the terms and conditions in various agreements throughout the State service, ~~insuring~~ and ensuring compatibility with merit system statutes and principles, and shall not agree to any terms or conditions for which there are not adequate funds available.

\* \* \*

Sec. 6. 3 V.S.A. § 906 is added to read:

§ 906. DESIGNATION OF MANAGERIAL, SUPERVISORY, AND  
CONFIDENTIAL EMPLOYEES

(a) The Commissioner of Human Resources shall determine those positions in the classified service whose incumbents the Commissioner believes should be designated as managerial, supervisory, or confidential employees. Any

disputes arising ~~therefrom~~ from the determination shall be finally resolved by the Board.

(b) The Executive Director of the Department of State's Attorneys and Sheriffs may determine positions in the State's Attorneys' offices whose incumbents the Executive Director believes should be designated as managerial, supervisory, or confidential employees. Any disputes arising from the determination shall be finally resolved by the Board.

Sec. 7. 3 V.S.A. § 908 is added to read:

§ 908. DESIGNATION OF STATE'S ATTORNEYS' EMPLOYEES;

STATEWIDE BARGAINING RIGHTS

Employees of the State's Attorney's offices shall be part of one or more statewide bargaining units, as determined to be appropriate by the Board pursuant to sections 927 and 941 of this title, for the purpose of bargaining collectively pursuant to this chapter.

Sec. 8. 3 V.S.A. § 925 is amended to read:

§ 925. MEDIATION; FACT FINDING

\* \* \*

(k) In the case of the State of Vermont or the Department of State's Attorneys and Sheriffs, the decision of the Board shall be final, and the terms of the chosen agreement shall be binding on each party, subject to appropriations in accordance with subsection 982(d) of this title. In the case of

the University of Vermont or the Vermont State Colleges, the decision of the Board shall be final and binding on each party.

\* \* \*

Sec. 9. 3 V.S.A. § 982 is amended to read:

§ 982. AGREEMENTS; LIMITATIONS, RENEGOTIATION, AND  
RENEWAL

\* \* \*

(c)(1) Except in the case of the Vermont State Colleges or the University of Vermont, agreements between the State and certified bargaining units ~~which~~ that are not arrived at under the provisions of subsection 925(i) of this title shall, after ratification by the appropriate unit memberships, be submitted to the Governor who shall request sufficient funds from the General Assembly to implement the agreement. If the General Assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated changes shall become effective at the beginning of the next fiscal year.

(2)(A) Agreements between the Department of State's Attorneys and Sheriffs and the certified bargaining units that are not arrived at under the

provisions of subsection 925(i) of this title shall, after ratification by the appropriate unit memberships, be submitted to the Governor and the General Assembly.

(B) The Executive Director of the Department of State's Attorneys and Sheriffs shall request sufficient funds from the General Assembly to implement the agreement. If the General Assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the General Assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated by the General Assembly, and the agreement with the negotiated changes shall become effective at the beginning of the next fiscal year.

\* \* \*

(g) In the event the State of Vermont, the Department of State's Attorneys and Sheriffs, the University of Vermont, and the Vermont State Colleges as employer and the collective bargaining unit are unable to arrive at an agreement and there is not an existing agreement in effect, the existing contract shall remain in force until a new contract is ratified by the parties. However, nothing in this subsection shall prohibit the parties from agreeing to a modification of certain provisions of the existing contract which, as amended, shall remain in effect until a new contract is ratified by the parties.

\* \* \*

Sec. 10. 13 V.S.A. § 5306 is amended to read:

§ 5306. VICTIM ADVOCATES

In order to carry out the provisions of the victims assistance program, ~~state's attorneys~~ State's Attorneys are authorized to hire victim advocates who shall serve at their pleasure unless otherwise modified by a collective bargaining agreement entered into pursuant to 3 V.S.A. chapter 27. Nothing in this section shall be construed to limit the subjects for bargaining pursuant to 3 V.S.A. § 904.

Sec. 11. 32 V.S.A. § 1185 is amended to read:

§ 1185. OFFICE EXPENSES

\* \* \*

(b)(1) Secretaries shall be hired by and shall serve at the pleasure of the State's Attorney unless otherwise modified by a collective bargaining agreement entered into pursuant to 3 V.S.A. chapter 27. Secretaries shall be State employees paid by the State, and shall receive those benefits available to other classified State employees who are similarly situated but they shall not be subject to the rules provided for under 3 V.S.A. chapter 13. The compensation of each Secretary shall be determined by the Commissioner of Human Resources with the approval of the Governor unless otherwise determined through collective bargaining pursuant to 3 V.S.A. chapter 27. In

fixing compensation, there shall be taken into consideration, among other things, the volume of work requiring the services of the Secretary and whether the services are on a full- or part-time basis.

(2) Nothing in this subsection shall be construed to limit the subjects for bargaining pursuant to 3 V.S.A. § 904.

Sec. 12. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

(a) A State's Attorney may appoint as many deputy State's Attorneys as necessary for the proper and efficient performance of his or her office, ~~and with the approval of the Governor, fix their pay not to exceed that of the State's Attorney making the appointment,~~ and may remove them at pleasure.

(b) The pay for deputy State's Attorneys shall be fixed by the Executive Director of the Department of State's Attorneys and Sheriffs or through collective bargaining pursuant to 3 V.S.A. chapter 27, but it shall not exceed the pay of the State's Attorney making the appointment. Deputy State's Attorneys shall be compensated only for periods of actual performance of the duties of ~~such~~ the office. Deputy State's Attorneys shall be reimbursed for their necessary expenses incurred in connection with their official duties when approved by the State's Attorneys and the Commissioner of Finance and Management.

(c) Deputy State's Attorneys shall exercise all the powers and duties of the State's Attorneys except the power to designate someone to act in the event of their own disqualification.

(d) Deputy State's Attorneys may not enter upon the duties of the office until they have taken the oath or affirmation of allegiance to the State and the oath of office required by the Constitution, and until ~~such~~ the oath together with their appointment is filed for record with the county clerk. If appointed and under oath, a deputy State's Attorney may prosecute cases in another county if the State's Attorney in the other county files the deputy's appointment in the other county clerk's office. In case of a vacancy in the office of State's Attorney, the appointment of the deputy shall expire upon the appointment of a new State's Attorney.

Sec. 13. 24 V.S.A. § 367 is amended to read:

§ 367. DEPARTMENT OF STATE'S ATTORNEYS AND SHERIFFS

\* \* \*

(c)(1) The Executive Director shall prepare and submit all budgetary and financial materials and forms which are required of the head of a department of State government with respect to all State funds appropriated for all of the Vermont State's Attorneys and sheriffs. At the beginning of each fiscal year, the Executive Director, with the approval of the Executive Committee, shall establish allocations for each of the State's Attorneys' offices from the State's

Attorneys' appropriation. Thereafter, the Executive Director shall exercise budgetary control over these allocations and the general appropriation for State's Attorneys. The Executive Director shall monitor the sheriff's transport budget and report to the sheriffs on a monthly basis the status of the budget. He or she shall provide centralized support services for the State's Attorneys and sheriffs with respect to budgetary planning, training, and office management, and perform such other duties as the Executive Committee directs. The Executive Director may employ clerical staff as needed to carry out the functions of the Department.

(2) The Executive Director shall prepare and submit a funding request to the Governor and the General Assembly for the purpose of securing General Fund appropriations for any increased costs related to a collective bargaining agreement and to the Department's contract bargaining and administration.

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#### Sec. 14. ADJUSTMENT FOR INITIAL CONTRACT

For increased costs related to the initial collective bargaining agreement that the Department of State's Attorneys and Sheriffs enters into pursuant to this act, including the costs of bargaining, implementation, and contract administration, the Department may prepare and submit a funding request to the General Assembly during the budget adjustment process if the timing of

the implementation of the agreement does not permit the Department to secure sufficient funding during the regular budgetary process.

Sec. 15. EXISTING BARGAINING UNITS; DECERTIFICATION

On the effective date of this act, the existing bargaining units and the related certifications of an exclusive bargaining representative for the deputy State's Attorneys, victim advocates, and secretaries employed by the Chittenden County State's Attorney and Franklin County State's Attorney shall be dissolved and the members of those bargaining units shall be eligible to organize and bargain collectively under the provisions of the State Employees Labor Relations Act, 3 V.S.A. chapter 27.

\* \* \* Effective Date \* \* \*

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.