

Supreme Court of Vermont
Office of State Court Administrator

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TO: Representative Sarah Copeland-Hanzas, Chair
House Government Operations

FROM: Patricia Gabel, Esq., State Court Administrator

RE: H.334 and Judicial Branch Use of Temporary Employees

DATE: March 15, 2019

This Memo provides an overview of our temporary workforce and an explanation of how this workforce is unique in state government.

Temporary employees represent a fraction of the Judiciary's salary budget for FY2019—just 4.9%. We expect to spend approximately \$980K on temporary employees against a permanent salary budget of \$19.9M. Although we spend little, the Judiciary maintains a large 'pool' of approximately 75, consisting of 39 judicial officers, 29 non-exempts and 7 management temporary employees. Approximately 1/3 are retired former state employees who work sporadically or only a few hours per week.

It is natural to view all government operations through the lens of the Executive branch. In reality, the operations of the Judiciary are much closer to those of the Legislative branch.

- The Judiciary has 350 permanent employees.
- 28 elected Assistant Judges are temporary employees as they are simultaneously employed by the counties in which they were elected. They work infrequently.
- Judiciary operates in 25 courthouses and buildings around the state. Several locations have as few as 2 to 8 employees and are stressed when even one employee is ill or otherwise unavailable.

- Our budget is much more heavily weighted toward employee salaries and associated fixed costs than most State of Vermont entities (nearly 90%). This high ratio of fixed costs gives us few options to react to staffing needs. Unlike the Executive branch, the Judiciary does not have a ‘pool’ of repurposed permanent position numbers to draw upon.
- A substantial percentage of Judiciary temporaries are invaluable retired former employees who are only interested in temporary employment.

The Judiciary’s use of temporary employees has remained consistent for many years and represents only a small fraction of Judiciary payroll. Our model for utilizing temporary employees predates the creation of the Judiciary bargaining unit in 2000. Furthermore, the Judiciary has followed the same policy governing its use of temporaries since the early 1990’s. This policy, established by the Supreme Court, lays out the parameters for requesting, approving and management of temporary employees.

We understand that on February 28, 2019 your committee took up the proposed legislation whose purpose is “... to clarify requirements related to the use of temporary State employees and to permit long-term temporary State employee to collectively bargain.”

Among the many significant changes proposed are revisions to 3 VSA § 1011. That section is part of 3 VSA Chapter 28- Judiciary Employees Labor Relations Act, which is commonly referred to as ‘JELRA’. As this legislation will have a marked impact on the functioning of the Judiciary, we thought it important that we share our perspective. The Judiciary does not support the legislation as written as it will tend to abrogate management’s contractual right to oversee the operations of the Judiciary.

For example, the current Judiciary policy allows us to hire temporaries for a ‘Special assignment’ or ‘Special project’. Accordingly, we currently have temporary employees supporting a 5-year IT project to replace our antiquated enterprise court management software. At the end of the project, we will have no need for these temporary employees. Under the proposed legislation, we would be obligated to hire them as permanent members of the bargaining unit.

In summary

- The judiciary has not become overly reliant on our temporary workforce.
- Permanent positions should be created by intentional allocations of resources and not by automatic measures that replaces management responsibility for stewardship of funds appropriated to the Judiciary.

cc: Gregg Mousley, Judiciary Chief of Finance and Administration
Steve Klein, Joint Fiscal Office
Maria Belliveau, Joint Fiscal Office
Stephanie Barrett, Joint Fiscal Office
Neil Schickner, Joint Fiscal Office
Kelly O'Brien, Committee Assistant

1 H.334

2 Introduced by Representatives Gannon of Wilmington, Gardner of Richmond,
3 Hooper of Burlington, and Mrowicki of Putney

4 Referred to Committee on

5 Date:

6 Subject: Executive; classification of State personnel; State Employees Labor
7 Relations Act; ~~Judiciary Employees Labor Relations Act~~; temporary
8 State employees

9 Statement of purpose of bill as introduced: This bill proposes to clarify
10 requirements related to the use of temporary State employees and to permit
11 long-term temporary State employees to collectively bargain.

12 An act relating to temporary State employees

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 3 V.S.A. § 323 is amended to read:

15 § 323. DEFINITIONS

16 As used in this chapter, unless the context clearly requires otherwise:

17 * * *

18 (2) “Bona fide emergency” means an unanticipated need for short-term
19 staffing:

1 (A) to prevent significant disruption to the continued operation of

2 State government;

3 (B) to avoid serious or imminent harm to the public, critical services,

4 or other staff; or

5 (C) that would jeopardize public safety.

6 (3) “Class” means one or more positions sufficiently similar in nature,
7 scope, and accountability that the same title, test of fitness, and schedule of
8 compensation may be applied to each position.

9 ~~(3)~~(4) “Job evaluation” means the systematic method used to determine
10 the value of each job in relation to other jobs within the State service.

11 Sec. 2. 3 V.S.A. § 331 is amended as follows:

12 § 331. TEMPORARY EMPLOYEES

13 (a) The State shall not employ any person in a temporary capacity except in
14 accordance with the provisions of this section.

15 (b)(1) On request of the appointing authority, the Commissioner of Human
16 Resources may approve, in writing, the creation of a temporary position and
17 the hiring of a person to fill such temporary position only if the position and
18 person are needed:

19 (A) to meet a seasonal employment need of State government;

20 (B) to respond to a bona fide emergency;

1 (C) to fill in for the temporary absence of an existing employee, or a
2 vacancy in an existing position; or

3 (D) to perform a governmental function that requires only
4 intermittent, sporadic, or ongoing employment ~~that averages less than 20 hours~~
5 ~~per week during any one calendar year~~, provided that such employment does
6 not exceed 1,280 work hours in any one calendar year.

7 * * *

8 (c)(1) The Commissioner may authorize the continued employment of a
9 person in a temporary capacity for more than 1,280 work hours in any one
10 calendar year if the Commissioner determines, in writing, that a bona fide
11 emergency exists for the appointing authority that requires such continued
12 employment. Annually, on or before January 15, the Commissioner shall
13 submit a report to the House Committee on General, Housing, and Military
14 Affairs and the House and Senate Committees on Government Operations:

15 * * *

16 (2) It shall be the responsibility of the head of each department to
17 provide to the Department of Human Resources a detailed justification for each
18 waiver to exceed the 1,280-work-hour limit within his or her department and
19 such other information as may be required in order to enable that department to
20 carry out its responsibility under this section.

1 (d) The Commissioner may transfer and convert existing, vacant positions
2 in the Executive Branch of State government to replace the temporary
3 positions of long-term temporary employees who are performing ongoing and
4 continuing functions of State government ~~for more than an average of 20 hours~~
5 ~~per week during any one calendar year or for more than 1,280 work hours in~~
6 any one calendar year.

7 * * *

8 (f)(1) An individual employed in a temporary capacity shall:

9 (A) be paid in accordance with the job classification and pay plan for
10 classified State employees that is most closely applicable to the work
11 performed by the individual; and

12 (B) receive paid and unpaid leave, including sick and annual leave,
13 parental and family leave, holidays, and other leave benefits provided to
14 comparable classified State employees.

15 (2) An individual employed in a temporary capacity shall not be
16 terminated without good cause.

17 (3) The State shall provide an individual who has been employed in a
18 temporary capacity for a period of six months with health insurance benefits
19 that, at a minimum, satisfy the affordable minimum essential coverage
20 standards of the Affordable Care Act and provide coverage for the individual's
21 dependents.

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

2 § 902. DEFINITIONS

3 As used in this chapter:

4 * * *

5 (5) "State employee" means any individual employed on a permanent or
6 limited status basis by the State of Vermont, the Vermont State Colleges, the
7 University of Vermont, or the State's Attorneys' offices, including permanent
8 part-time employees, and an individual whose work has ceased as a
9 consequence of, or in connection with, any current labor dispute or because of
10 any unfair labor practice, but excluding an individual:

11 (A) exempt or excluded from the State classified service under the
12 provisions of section 311 of this title, except that the following types of
13 employees are included within the meaning of "State employee":

14 (i) State Police in the Department of Public Safety;

15 (ii) employees of the Defender General, excluding attorneys
16 employed directly by the Defender General and attorneys contracted to provide
17 legal services;

18 (iii) deputy State's Attorneys;

19 (iv) individuals employed in temporary, seasonal, or intermittent
20 positions who work more than 1,280 hours per year in one or more such
21 positions for a period of two years, or who are designated as temporary

1 employees but whose employment does not comply with the requirements of
2 subsection 331(b) of this title; and

3 (v) employees of State's Attorneys' offices are included within the
4 meaning of "State employee";

5 * * *

6 ~~Sec. 4. 3 V.S.A. § 1011 is amended to read:~~

7 ~~§ 1011. DEFINITIONS~~

8 ~~As used in this chapter:~~

9 ~~_____ * * *~~

10 ~~(8) "Employee," means any individual employed and compensated on a~~
11 ~~permanent or limited status basis by the Judiciary Department, including~~
12 ~~permanent part time employees and any individual whose employment has~~
13 ~~ceased as a consequence of, or in connection with, any current labor dispute or~~
14 ~~because of an unfair labor practice. "Employee" does not include any of the~~
15 ~~following:~~

16 ~~_____ * * *~~

17 ~~(E) an individual employed on a temporary, contractual, seasonal, or~~
18 ~~on-call basis, including an intern, provided that:~~

19 ~~(i) the individual was hired to:~~

20 ~~(I) temporarily replace an employee on vacation, medical leave,~~
21 ~~or another leave of absence;~~

1 ~~(II) accommodate peak or increased workloads; or~~
2 ~~(III) replace or supplement permanent employees working on~~
3 ~~special assignments or projects not normally included in the duties of~~
4 ~~permanent employees; and~~
5 ~~(ii) the individual has not worked more than 1,280 hours per year~~
6 ~~in one or more such positions for a period of two years;~~

7

* * *

8

Sec. 5. EFFECTIVE DATE

9

This act shall take effect on July 1, 2019.