

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Government Operations to which was referred Senate  
3 Bill No. 134 entitled “An act relating to background investigations for State  
4 employees with access to federal tax information” respectfully reports that it  
5 has considered the same and recommends that the bill be amended by striking  
6 out all after the enacting clause and inserting in lieu thereof the following:

7 \* \* \* Background Investigations \* \* \*

8 Sec. 1. 3 V.S.A. § 241 is amended to read:

9 § 241. BACKGROUND INVESTIGATIONS

10 \* \* \*

11 (b) As used in this chapter, “Recipient” means the following authorities of  
12 the Executive Branch of State government that receive FTI:

13 (1) Agency of Human Services, including the:

14 (A) Department for Children and Families;

15 (B) Department of Health;

16 (C) Department of Mental Health; and

17 (D) Department of Vermont Health Access.

18 (2) Department of Labor.

19 (3) Department of Motor Vehicles.

20 (4) Department of Taxes.

21 (5) Agency of Digital Services.

1 (6) Department of Buildings and General Services.

2 (c)(1) The Recipient shall conduct an initial background investigation of  
3 any individual, including a current or prospective employee, volunteer,  
4 contractor, or subcontractor, to whom the Recipient will permit access to FTL  
5 for the purpose of assessing the individual’s fitness to be permitted access to  
6 FTL.

7 (2) The Recipient shall, at least every 10 years, conduct a periodic  
8 background reinvestigation of any employee, volunteer, contractor, or  
9 subcontractor to whom the Recipient permits access to FTL.

10 (3) The impact of the results of a background investigation performed  
11 pursuant to subdivision (1) of this subsection shall be the subject of impact  
12 bargaining between the State and the collective bargaining representative for  
13 the employee’s bargaining unit to the extent required by any collective  
14 bargaining agreements between the parties.

15 \* \* \*

16 \* \* \* State Temporary and Seasonal Employees \* \* \*

17 Sec. 2. 3 V.S.A. § 323 is amended to read:

18 § 323. DEFINITIONS

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

20 \* \* \*

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

3                 (A) to prevent significant disruption to the continued operation of  
4 State government;

5                 (B) to avoid serious or imminent harm to the public, critical services,  
6 or other staff; or

7                 (C) to avoid jeopardizing public safety.

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

11           ~~(3)~~(4) “Job evaluation” means the systematic method used to determine  
12 the value of each job in relation to other jobs within the State service.

13           (5) “Seasonal employment” means employment in a temporary position  
14 with a specific start date and anticipated end date for a period of not more than  
15 seven months in any 12-month period or employment in a temporary position  
16 with a specific start date and anticipated end date for a period of more than  
17 seven months that has been approved by the Commissioner of Human  
18 Resources pursuant to subdivision 331(c)(3) of this chapter. Seasonal  
19 employment includes employment in temporary positions that are available on  
20 a reoccurring basis from year to year.

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

1 § 331. TEMPORARY EMPLOYEES

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

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

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

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

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

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

16 \* \* \*

17 (c)(1) The Commissioner may authorize the continued employment of a  
18 person in a temporary capacity for more than 1,280 work hours in any one  
19 calendar year if the Commissioner determines, in writing, that a bona fide  
20 emergency exists for the appointing authority that requires such continued  
21 employment. Authorization of temporary employment for more than 1,280

1 work hours in a calendar year shall not be required for seasonal employment,  
2 as that term is defined pursuant to section 323 of this chapter. Annually, on or  
3 before January 15, the Commissioner shall submit a report to the House  
4 Committee on General, Housing, and Military Affairs and the House and  
5 Senate Committees on Government Operations:

6 \* \* \*

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

12 (3) The Commissioner may authorize seasonal employment in a specific  
13 position for a period of between seven and 12 months if the Commissioner  
14 determines, in writing, that the nature and duties of the position require the  
15 employment of a person for a period of more than seven months in a 12-month  
16 period. The Commissioner shall not authorize seasonal employment for a  
17 period of more than seven months in a 12-month period if the authorization is  
18 intended to circumvent, or has the effect of circumventing, the policies and  
19 purposes of the classified service under this chapter. Annually, on or before  
20 January 15, the Commissioner shall submit a report to the House and Senate  
21 Committees on Government Operations regarding:

1 (A) the total number of positions in seasonal employment that have  
2 been authorized for a period of between seven and 12 months during the prior  
3 calendar year;

4 (B) the agency or department that each position identified in  
5 subdivision (A) of this subdivision (c)(3) is assigned to; and

6 (C) the period of time that each identified position is authorized for.

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

13 \* \* \*

14 (f) An individual employed in a temporary or seasonal capacity shall be  
15 entitled to the whistleblower protections, rights, and remedies provided to State  
16 employees pursuant to sections 971–978 of this title.

17 Sec. 4. STATE TEMPORARY AND SEASONAL EMPLOYEES; REPORT

18 On or before January 15, 2020, the Secretary of Administration shall submit  
19 a written report to the House and Senate Committees on Appropriations and on  
20 Government Operations regarding:

1           (1) the number of temporary employees, not including individuals  
2           working in seasonal employment as defined pursuant to 3 V.S.A. § 323(5),  
3           who, during the prior calendar year, were employed by each agency and  
4           department in a temporary capacity pursuant to 3 V.S.A. § 331;

5           (2) the number of temporary positions in each agency or department  
6           identified pursuant to subdivision (1) of this section that are performing  
7           ongoing and continuing functions of State government for which a permanent  
8           classified position would better meet the needs of the State;

9           (3) the number of temporary positions during the prior calendar year,  
10           organized by agency and department, not including individuals working in  
11           seasonal employment as defined pursuant to 3 V.S.A. § 323(5), in which one  
12           or more individuals have been employed for a combined total of more than  
13           1,280 hours per year for a period of two years;

14           (4) the projected cost and the potential impact of replacing the  
15           temporary positions identified in subdivision (3) of this section with  
16           permanent, classified positions on the relevant department or agency's  
17           efficiency and ability to fulfill its mission and duties; and

18           (5) the number of individuals working in seasonal employment as  
19           defined pursuant to 3 V.S.A. § 323(5) during the prior calendar year organized  
20           by agency and department, including the start and end date for each position

1 and the total number of hours worked by the individual employed in each  
2 position.

3 Sec. 5. CREATION OF NEW CORRECTIONAL OFFICER POSITIONS

4 On or before June 30, 2020, the Secretary of Administration shall create 30  
5 new Correctional Officer I positions in the Department of Corrections, which  
6 shall be funded within existing departmental appropriations.

7 Sec. 6. 4 V.S.A. § 40 is added to read:

8 § 40. REPORT ON TEMPORARY EMPLOYEES

9 Annually, on or before January 15, the State Court Administrator shall  
10 submit a report to the House Committee on General, Housing, and Military  
11 Affairs and the House and Senate Committees on Government Operations  
12 identifying for each of the two prior calendar years:

13 (1) the total number of individuals employed by the Judiciary  
14 Department on a temporary basis who have worked in excess of 1,280 hours in  
15 the prior calendar year, excluding employees identified in 3 V.S.A. § 1011(7),  
16 (8)(A)–(D), (8)(F)–(G), and (8)(I)–(K);

17 (2) the total number of temporary positions in which one or more  
18 individuals have been employed for a combined total of more than 1,280  
19 hours, excluding positions filled by employees identified in 3 V.S.A.  
20 § 1011(7), (8)(A)–(D), (8)(F)–(G), and (8)(I)–(K);



1           (3) the total number of hours worked by each temporary employee  
2 identified pursuant to subdivision (1) of this subsection; and

3           (4) the total number of years during which each temporary employee  
4 identified pursuant to subdivision (1) of this subsection has worked for the  
5 Judiciary Department.

6           \* \* \* Expansion and Codification of Position Pilot Program\* \* \*

7           Sec. 7. 2014 Acts and Resolves No. 179, Sec. E.100(d), as amended by 2015  
8           Acts and Resolves No. 4, Sec. 74, by 2016 Acts and Resolves No.172, Sec.  
9           E.100.2, 2017 Acts and Resolves No. 85, Sec. E.100.1, and by 2018 (Sp. Sess.)  
10           Acts and Resolves No. 11, Sec. E.100.1 is further amended to read:

11           (d) Position Pilot Program. A Position Pilot is hereby created to assist  
12           participating departments in more effectively managing costs of overtime,  
13           compensatory time, temporary employees, and contractual work by removing  
14           the position cap with the goal of maximizing resources to the greatest benefit  
15           of Vermont taxpayers.

16   \* \* \*

17           (7) This Pilot shall sunset on ~~July 1, 2020, unless extended or modified~~  
18 ~~by the General Assembly July 2, 2019.~~

19   \* \* \*

20           Sec. 8. 3 V.S.A. § 328 is added to read:

21           § 328. CREATION OF NEW POSITIONS

1       (a) Intent. It is the intent of the General Assembly to maximize the  
2       resources of the State to the greatest benefit of Vermont taxpayers by  
3       eliminating the cap on the total number of authorized State positions in the  
4       Department of State’s Attorneys and Sheriffs, the Vermont Veterans Home,  
5       and the State agencies and departments under the Office of Governor to allow  
6       those agencies and departments to more effectively manage costs of overtime,  
7       compensatory time, temporary employees, and contractual work by permitting  
8       the creation of new positions pursuant to the provisions of subsection (b) of  
9       this section.

10       (b) Creation of positions.

11               (1) On request of an appointing authority, the Secretary of  
12       Administration may approve, in writing, the creation of a new permanent  
13       position in the Department of State’s Attorneys and Sheriffs, the Vermont  
14       Veterans Home, and the State agencies and departments under the Office of  
15       Governor in order to address a specific need identified by the appointing  
16       authority.

17               (2) The Secretary of Administration may only approve the creation of a  
18       new position pursuant to subdivision (1) of this subsection if the creation of the  
19       requested permanent position is anticipated to be more cost-effective than  
20       meeting the identified need with existing departmental resources, including

1 through the use of overtime or compensatory time for existing State  
2 employees.

3 (3) Any new position created pursuant to this subsection shall be funded  
4 within existing departmental appropriations and shall not be transferrable  
5 outside the agency or department in which it is created.

6 (c) Reporting requirements.

7 (1) No later than 15 days before a position created pursuant to  
8 subsection (b) of this section will be established, the Secretary of  
9 Administration, in consultation with the Commissioner of Human Resources  
10 and the appointing authority, shall submit to the Joint Fiscal Committee, the  
11 Government Accountability Committee, and the House and Senate Committees  
12 on Government Operations a written report identifying the position to be  
13 created, the reason for the creation of the position, the method used to evaluate  
14 the cost-effectiveness of creating the position, and the expected short- and  
15 long-term impact of creating the position on the agency or department's  
16 budget.

17 (2) Annually, as part of its budget presentation, an agency or department  
18 in which, during the prior fiscal year, one or more new positions was created  
19 pursuant to this section shall report on the number and type of positions  
20 created, the source of funds used to support each position created, the  
21 performance and cost outcomes associated with each position created, and

1 whether the projected budgetary outcomes identified pursuant to subdivision  
2 (1) of this subsection have been realized.

3 Sec. 9. AUTHORIZATION FOR CREATION OF NEW POSITIONS

4 Notwithstanding any provision of law enacted during the 2019 legislative  
5 session to the contrary, the Department of State's Attorneys and Sheriffs, the  
6 Vermont Veterans Home, and the State agencies and departments under the  
7 Office of Governor may create new positions in conformance with the  
8 provisions of 3 V.S.A. § 328.

9 \* \* \* Repeal of Report on Temporary Employees \* \* \*

10 Sec. 10. 3 V.S.A. § 331 is amended to read:

11 § 331. TEMPORARY EMPLOYEES

12 \* \* \*

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

20 ~~(A) identifying the total number of temporary employees who have~~  
21 ~~worked:~~

- 1            ~~(i) 1,280 hours in the prior calendar year; or~~  
2            ~~(ii) in excess of 1,280 hours in the prior calendar year;~~  
3            ~~(B) identifying the agency or department that is assigned the~~  
4 ~~temporary position;~~  
5            ~~(C) identifying the total number of hours worked by each temporary~~  
6 ~~employee; and~~  
7            ~~(D) including a statement:~~  
8            ~~(i) recommending the conversion of the position to a permanent~~  
9 ~~classified position; or~~  
10           ~~(ii) stating the reasons why the temporary position should be~~  
11 ~~continued.~~

12                                 \* \* \*

13                             \* \* \* Effective Dates \* \* \*

14            Sec. 11. EFFECTIVE DATES

15            (a) Secs. 7, 8, and 9 shall take effect on July 2, 2019.

16            (b) Sec. 10 shall take effect on July 1, 2024.

17            (c) This section and the remaining sections of this act shall take effect on  
18 July 1, 2019.

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(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE