

Legislative Analysis



PUBLIC BODY LAW ENFORCEMENT ACT

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House Bill 5906 and 5907 as enrolled
Public Acts 378 and 379 of 2004
Sponsor: Rep. William VanRegenmorter
House Committee: Criminal Justice
Senate Committee: Judiciary

Second Analysis (10-6-05)

BRIEF SUMMARY: House Bill 5906 would create a new act to allow multicounty metropolitan park districts and school districts meeting population criteria to create a law enforcement agency for the purpose of safeguarding the public peace and health and for the safety of persons and properties under their jurisdiction and control. House Bill 5907 would amend the Commission on Law Enforcement Standards Act to define “multicounty metropolitan district”, revise the definition of “police officer”, and establish minimum requirements for law enforcement officers of a multicounty metropolitan district.

FISCAL IMPACT: The bills would potentially increase local costs by allowing governing boards of certain public bodies to create law enforcement agencies. The magnitude of the fiscal impact is indeterminate.

THE APPARENT PROBLEM:

Public Act 237 of 1998 amended the Michigan Law Enforcement Officers Training Council Act to rename it the Commission on Law Enforcement Standards Act and reestablish the Law Enforcement Council as the Commission on Law Enforcement Standards, known as MCOLES. Under the act, MCOLES is responsible for the establishment of minimum standards for certification of police officers and certifying as law enforcement officers those individuals meeting employment and training requirements. MCOLES is also responsible for investigations into alleged violations of the act and the decertification of officers convicted of certain crimes. Public Act 237 also required law enforcement agencies to maintain an employment history record for each officer employed by the agency, including an officer's hire and discharge dates.

What Public Act 237 didn't do was to clarify a problematic phrase contained in the definition of “police officer” or “law enforcement officer”. Those terms are defined as meaning a regularly employed member of a police force or other organization of a city, county, township, or village, of the state, or of a state university or community college who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state. The phrase “other organization” is not defined in statute, but is defined in the administrative rules as meaning an agency which is not a political subdivision of the state and which operates a law enforcement agency as a result of legislative authorization.

Apparently, there has been much discussion and disagreement through the years as to the proper interpretation of the phrase “other organization”. After seeking input from the state’s attorney general, MCOLES decided in late April to tighten the interpretation of the phrase to mean employment with an agency that is not a political subdivision of the state and which operates a recognized law enforcement agency authorized and established under state law. Proposed rules currently under consideration would redefine “other organization” to reflect this interpretation.

The problem then centers on who MCOLES will be able to certify as police or law enforcement officers. According to the April decision, MCOLES will cease to certify, as of July 28, 2004, officers employed by entities that lack legislative authority to operate a police or law enforcement agency. Legislation has been offered to amend MCOLES’ enabling act to clarify which individuals it may certify with full police powers and to create a new act to give legislative authority to some entities that currently operate police agencies but have no clear statutory authority to do so under the more recent interpretation of “other organizations”.

THE CONTENT OF THE BILLS:

House Bill 5906 would create the Public Body Law Enforcement Agency Act to permit a public body to create a law enforcement agency by resolution of its governing entity. The act would not limit the jurisdiction of state, county, or municipal peace officers. “Public body” would mean:

- a multicounty metropolitan district authorized and established under state law by two or more counties with a combined population of not less than 3 million for the purpose of cooperative planning, promoting, acquiring, constructing, owning, developing, maintaining, or operating parks; or,
- a school district with a membership of at least 20,000 pupils that includes in its territory a city with a population of at least 180,000.

"Governing entity" would mean, as applicable, either of the following:

- For any public body other than a qualifying school district, the governing board of the public body.
- In the case of a public body that is a qualifying school district under Part 5a of the Revised School Code, the chief executive officer of the school district (subject to the concurrence of the school reform board of the school district).

Duties of a public body agency law enforcement officer. A law enforcement officer of a public body law enforcement agency could be granted by the public body the same powers, immunities, and authority as granted by law to peace officers and police officers (after at least two public hearings were held regarding whether these powers should be granted). This would include the power to detect crimes; enforce the criminal laws of the state; and enforce state laws, local ordinances, and ordinances and regulations of the

public body. These officers would be considered peace officers and so would have the same authority of police officers provided under the Michigan Vehicle Code and the Code of Criminal Procedure. In addition, these officers would have to meet the minimum employment standards of the Commission on Law Enforcement Standards Act.

However, the jurisdiction of law enforcement officers appointed under the bill would be limited to property owned or leased by the public body, regardless of where located in the state, and would extend to any public right-of-way that traversed or was contiguous to the property. But, the officers' jurisdiction could be extended by state law governing peace officers or through deputization by a county sheriff if authorized by the governing entity. If the officers were employed by a school district, their jurisdiction would include all territory within the boundaries of the school district and all property outside the boundaries that was owned, leased, or rented by or under the legal control of the school district.

Public body law enforcement agency. Before a public body could create a law enforcement agency, its governing entity would have to obtain the approval of the prosecuting attorney of each county within which the public body owns, maintains, or controls property. A public body wholly located within a single city would also have to obtain the approval of the local chief of police. If the property of the public body was not located entirely within one city, the approval of the sheriff of each county within which the public body owned, maintained, or controlled property would have to be obtained. If all the property of the public body was located within a county without a first class school district, the public body would also have to obtain the approval of the county sheriff. [Detroit is the only school district classified as a first class school district.] The prosecutor, sheriff, and/or chief of police would have to determine, before granting approval, that the proposed law enforcement agency was needed to assure adequate public safety on the property of the public body and that the proposed agency could comply with minimum guidelines required by the bill.

In addition, before creating the law enforcement agency, the governing entity would have to hold at least two public hearings, in the proposed agency's jurisdiction, regarding the creation of a law enforcement agency. A record would have to be made of the hearing and copies provided to the prosecuting attorneys, sheriffs, and chiefs of police from whom approval for creating a law enforcement agency is required.

A public law enforcement agency would have to enter into a memorandum of understanding with each local law enforcement agency with which it had overlapping jurisdiction. The memorandum would establish reasonable communication and coordination efforts between those law enforcement agencies. The memorandum of understanding of a public law enforcement agency that was a qualifying school district would also have to establish the jurisdiction of the public law agency.

Each law enforcement agency created under the bill would have to submit monthly uniform crime reports pertaining to crimes that occurred within the agency's jurisdiction to the Department of State Police under provisions of MCL 28.251, which requires the

reports to include the number and nature of offenses committed and the disposition of such offenses. It would also have to maintain an employment history record for each law enforcement officer employed by the agency as required by Section 9d of the Commission on Law Enforcement Standards Act. Further, a public law enforcement agency could not begin operations until an oversight committee was appointed and took office.

Furthermore, a law enforcement agency created under the bill would have to comply with all of the following minimum standards:

- Funding for an agency would be by appropriation of public funds only.
- The agency would have to maintain liability insurance.
- The agency would have to establish and abide by written policies covering the extent of the officers' authority to enforce state and local criminal laws, ordinances, and regulations of the public body (any additional authority through deputization by a county sheriff or chief of police would have to be described in the policy); the authority and responsibility of the chief law enforcement officer of the agency; employee discipline; the legal status of agencies and personnel who respond to mutual aid requests; any other written policy or procedure consistent with ones implemented by the sheriff or chief of police whose approval was required in order to create the agency; the requirement to maintain an employment history record of each officer including hire and termination dates; and any other policy or procedure required by statute.
- The agency would have to develop and maintain an organizational chart describing the structure of the agency and responsibilities and authority within the agency and develop and maintain written employment position descriptions for all agency personnel.

Written documentation of compliance with the above minimum standards would have to be presented to each county prosecuting attorney and sheriff, and chief of police when applicable, before approval was granted to create a law enforcement agency. A copy of the documentation would have to be filed with MCOLES along with written approval from all affected prosecuting attorneys, sheriffs, and chiefs of police.

Failure to comply with and maintain these minimum standards would constitute just cause for the county prosecuting attorneys and sheriffs or chiefs of police, by unanimous written approval, to withdraw approval for the creation of the agency. However, before approval could be withdrawn, at least two public hearings would have to be held within the agency's jurisdiction as to whether maintenance of the minimum standards had failed.

Law enforcement agency oversight committee. An oversight committee consisting of six individuals as provided under the bill would have to be appointed by the public body. The committee would have to receive and address public complaints concerning that agency or its officers and could recommend to the public body that an investigation be conducted regarding alleged misconducts by officers of that law enforcement agency.

Responsibilities and duties of governing board of metropolitan district. Under the bill, the governing board of a public body that was a multicounty metropolitan district could do the following:

- Adopt and amend rules, regulations, and ordinances for the management, government, and use of any property under its control; establish penalties for violations of those rules, regulations, and ordinances; and enforce the penalties.
- Adopt and enact rules, regulations, and ordinances designed to safeguard the public peace and health and for the safety of persons and property upon or within the limits of the properties under its control. These could include rules, etc. regarding the proper policing and supervision of persons and property, parking, and the regulation of signs that could impede the safe use of roads within the limits of the properties.

Sanctions and penalties. Each ordinance adopted by a governing board would have to provide for a penalty for a violation. Violations could be punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both, for a violation substantially corresponding to a violation of state law that is a misdemeanor for which the maximum term of imprisonment is 93 days. The board could also adopt an ordinance designating a violation as a state civil infraction punishable by a civil fine. The bill would detail requirements for the publishing of an ordinance passed by a public body and would specify that an ordinance would take effect immediately upon its publication unless it contained a subsequent effective date.

House Bill 5907 would amend the Commission on Law Enforcement Standards Act (MCL 28.602 and 28.609) to revise the definition of “police officer” and define “multicounty metropolitan district”. The bill would define “multicounty metropolitan district” to mean an entity authorized and established under state law by two or more counties with a combined population of not less than three million for the purpose of cooperative planning, promoting, acquiring, construction, owning, developing, maintaining, or operating parks.

Currently, the definition of “police officer” contained in the act includes a regularly employed member of a police force or other organization of a city, county, township, or village, of the state, or of a state university or community college who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state. The bill would delete the underlined section of the definition and replace it with “a regularly employed member of a law enforcement agency authorized and established pursuant to law, including common law”.

The bill would also include in the definition of “police officer” or “law enforcement officer” the following:

- A law enforcement officer of a multicounty metropolitan district subject to certain restrictions;

- a county prosecuting attorney's investigator that was sworn and fully empowered by the sheriff of that county;
- until December 31, 2007, a law enforcement officer of a school district that had a membership of at least 20,000 pupils and that included in its territory a city with a population of at least 180,000; and,
- a fire arson investigator from a fire department within a city with a population of not less than 750,000 who was sworn and fully empowered by the city chief of police.

The bill would retain the current inclusion of a sergeant at arms of either house of the legislature who was commissioned as a police officer under provisions of the Legislative Sergeant at Arms Police Powers Act and the inclusion of a law enforcement officer of a Michigan Indian Tribal police force.

A law enforcement officer of a multicounty metropolitan district, other than an officer employed by a law enforcement agency created under provisions of House Bill 5906, would not be empowered to exercise the authority of a peace officer and could not be employed in a position for which peace officer authority was granted under state law unless all of the following requirements were met:

- The officer met or exceeded minimum standards for certification under the act.
- The officer was deputized by the sheriff or sheriffs of the county or counties in which the multicounty metropolitan district was located (and in which he or she would work).
- The officer's deputation or appointment was made under a written agreement that included any terms required between the state or local law enforcement agency and the governing board of the multicounty metropolitan district that is employing the officer.
- The above written contract was filed with the commission.

A public body that created a law enforcement agency under the provisions of House Bill 5906 that employed one or more law enforcement officers certified under this act would be considered to be a law enforcement agency for purposes of Section 9d regarding maintenance of employment history records for each law enforcement officer and reporting of officers' hire and termination dates.

House Bill 5907 is tie-barred to House Bill 5906.

ARGUMENTS:

For:

When MCOLES certifies an individual as a law enforcement officer, it confers on that person full police powers which includes the ability to investigate crimes, enforce state and local laws, carry weapons, obtain search and arrest warrants, and make warrantless arrests. Therefore, it is important that state law be clear as to which individuals MCOLES is authorized to certify and that it ensure that appropriate oversight

mechanisms are in place for entities that operate law enforcement agencies. Reportedly, the phrase “other organization” contained in the definition of the terms “police officers” and “law enforcement officers” has been under debate for several years. Just this past April, MCOLES adopted a more stringent interpretation of the phrase that they feel fits better with the definition of “other organization” contained in current and proposed departmental rules. Basically, in order to operate a police or law enforcement agency, an entity would have to have clear statutory authority. House Bills 5906 and 5907 work together to clarify those entities that would have authority to maintain a law enforcement agency and those individuals who MCOLES could certify as law enforcement or police officers.

House Bill 5907 would redefine “police officer” and “law enforcement officer” to reflect this newer, stringent approach and to grant statutory authority, until December 31, 2007, to multicounty metropolitan districts who employ law enforcement officers to maintain the peace at metro parks to continue to be eligible for certification and also for the two largest school districts in the state – Detroit and Grand Rapids – to have the statutory authority to maintain their own law enforcement agencies. The bill would also allow individuals employed as investigators by county prosecutors, who often are retired police officers, to be certified during the time of their employment with the prosecutor’s office. All of these individuals would have to meet minimum certification standards and their employment histories would have to be tracked and reported just as the employment histories of all other police officers must be maintained.

House Bill 5906 grants the statutory authority to multicounty metropolitan districts meeting certain population and purpose criteria and Detroit and Grand Rapids school districts to establish a law enforcement agency and employ law enforcement officers. However, establishment of a law enforcement agency would not be easy; approval would have to come first from the county prosecutor and in some cases, the county sheriff and/or the chief of police; a memorandum of understanding outlining cooperation and communication with other law enforcement agencies when there are overlapping jurisdictions would have to be agreed upon in writing; and monthly uniform crime reports would have to be submitted to the state police, employment history reports would have to be maintained, and an oversight committee would have to be formed.

Against:

Representatives of the Detroit public schools believe that the approval process for creating a law enforcement agency contained in House Bill 5906 needs to be changed. Under the bill, approval for the Detroit school district to operate a law enforcement agency must come from the county prosecutor and chief of police. If either of those individuals felt that the district should not operate its own law enforcement agency, the current system would have to be disbanded and the school district would be reliant on the city’s police force to provide safety for its students.

Reportedly, the district’s operation of its own law enforcement force began several years ago after a number of female students were sexually assaulted on the way to and from school. Often, the attacks coincided with the shift changes of the city police, meaning

that few officers were on patrol during the time periods that the attacks occurred. Further, whenever visiting dignitaries or large conferences came to the city, or other major events were held in Detroit, the city police officers that provided security at the schools or at school functions were pulled off those duties and reassigned to help with security at the event. Being able to operate its own police force has enabled the school district to provide greater safety to students on the way to and from school and when at school or school events. To disrupt the current system could put students and teachers at risk and result in increased costs to the school district. It has been recommended that the approval process be amended to be by legislative authority, and not by approval from county and city officials. Without the amendment, employees currently employed in this capacity will lose their MCOLES certification as law enforcement officers by fall unless they were able to secure the endorsement of the named officials.

Response:

It is appropriate for approval for creation of a law enforcement agency to come from those already charged with protecting the public safety and enforcing the laws, namely, county prosecutors and, in some cases, county sheriffs and/or chiefs of police. The enrolled version only requires approval by the county prosecutor and chief of police, whereas earlier versions of the bill would also have required approval by the Wayne County Sheriff. Approval should not come solely from the legislature, especially because a law made today must still apply to future events, and only those on the scene at the time of consideration for creating a law enforcement agency would have the facts to decide if doing so would benefit local citizens at that time. Besides, some feel that there are too many different law enforcement agencies with overlapping jurisdictions and that consolidation would make better sense and maximize local resources to ensure the public safety and peace.

For:

House Bill 5907 was amended to include in the definition of police officers and law enforcement officers members of the Detroit Arson Unit. These individuals are certified police officers (and also trained fire fighters) whose unit is housed in the Detroit Fire Department. Because of the police powers granted to them, they are able to investigate crimes and homicides involving fire, obtain search warrants, interview witnesses, obtain arrest warrants, and carry weapons. These police powers enable them to do their jobs effectively and efficiently at a lower cost to taxpayers and in a timelier manner than if an arson investigator (as a fire fighter) had to have a police officer assigned to each case to obtain the search warrants, etc. Had they not been included, these individuals (who currently number 24) in the definition of law enforcement officers would have lost their certifications and their police powers with it. The only way to guarantee uninterrupted service to the residents of Detroit was to amend the bill to include the Detroit arson unit in the definition as a police officer or law enforcement officer in a similar manner as the inclusion of investigators hired by county prosecutors.

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