



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 594 and 595 (as introduced 9-27-17)

Sponsor: Senator Arlan Meekhof

Committee: Government Operations

Date Completed: 10-3-17

CONTENT

Senate Bill 594 would enact the "Special Police Agency Act" to do the following:

- Prohibit a person from providing law enforcement services as a special police agency under contract with a legally organized entity unless licensed by the Michigan Department of State Police (MSP).
- Prescribe the licensing process, application fee, and criteria for licensure.
- Allow the MSP to issue a temporary license that would be valid for up to 120 days.
- Allow a legally organized entity to enter into a contract with a special police agency to provide law enforcement service for a specified period of time and in a specified geographic location in Michigan.
- Require the contract to be approved by the local prosecuting attorney and the sheriff (or the police chief of a municipality) if the entity entering into the contract were a local unit of government.
- Require an applicant for employment as a special police officer to undergo a criminal background check.
- Provide that a special police officer would have the same warrantless arrest authority as a public peace officer.
- Limit a special police officer's arrest authority to the duration of the contract between a special police agency and a legally organized entity.
- Extend governmental immunity to a special police agency and its officers.
- Allow the Commission on Law Enforcement Standards to promulgate rules permitting a special police agency to enter into a reciprocal agreement with other states.
- Provide that a violation of the proposed Act would be a felony punishable by imprisonment for up to four years or a maximum fine of \$5,000, or both.

Senate Bill 595 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felony proposed by Senate Bill 594 as a Class F offense against the public order.

Senate Bill 595 is tie-barred to Senate Bill 594. Each bill would take effect 90 days after its enactment. A detailed description of Senate Bill 594 follows.

Definitions

"Legally organized entity" would include, but not be limited to, an association, corporation, partnership, proprietorship, trust, foundation, nonprofit organization, school district, political subdivision, local unit of government, federally recognized Indian tribe, or institution of higher education.

"Special police officer" would mean an individual who is currently or was previously licensed as a law enforcement officer within the preceding two years under the MCOLES Act, who is authorized to prevent and detect crime and enforce the general criminal laws of the State.

License Requirement; Fee; Application

A person would be prohibited from providing law enforcement services as a special police agency under contract with a legally organized entity unless licensed under the proposed Act. A person also could not advertise its business as a special police agency without first obtaining a license from the MSP to provide law enforcement services.

The MSP would have to provide an application for licensure on its website. The application form would have to request all of the following from an applicant:

- Identifying information of the applicant.
- The applicant's fingerprints if the applicant were an individual, or the fingerprints of the applicant's owners who had a controlling interest in the applicant, if the applicant were a business entity.
- Evidence that the applicant, if an individual, had not been adjudged insane, unless he or she had been adjudged restored to sanity.
- Evidence that the applicant had at least \$1.0 million in liability insurance or was capable of being self-insured.

("Controlling interest" would mean an ownership interest in a business entity that entitles an individual to enter into legally binding contracts on behalf of the entity.)

Also, if the applicant were an individual, the application form would have to request reference statements from at least five reputable citizens who had known him or her for at least five years; who could attest that the applicant was honest, of good character, and competent; and who were not related to the applicant or connected to him or her by blood or marriage. If the applicant were a business entity, the application form would have to request reference statements from at least five reputable citizens who had conducted business or had other dealings with the applicant and its owners who had a controlling interest in the applicant for at least five years; who could attest that the applicant's owners were honest, of good character, and competent; and who were not related or connected to the applicant's officers and owners by blood or marriage.

The MSP would have to charge a reasonable fee for processing the application, and could not issue a license unless the applicant paid the fee. The fee would be \$200 if the applicant were an individual or sole proprietorship, or \$300 if the applicant were a business entity. The MSP would have to forward the fee to the State Treasurer for deposit into the General Fund.

Upon receiving the application and fee, the MSP would have to investigate the applicant's qualifications for licensure.

Each application would have to contain all of the following:

- The name of the applicant and the principal address where the applicant resided if the applicant were an individual, or the principal address where the applicant was located in the State, if a business entity.
- The location of any branch office of the applicant.
- If the applicant were a limited liability company, its certificate of incorporation or registration.
- The address of any website registered to the applicant.

Each applicant also would have to submit two passport-quality photographs of himself or herself or, if the applicant were a business entity, of the owners of the applicant with a controlling interest.

Each applicant would have to sign and verify the application.

Criteria for Licensure

The MSP would have to issue to an applicant a license to conduct business as a special police agency if the individual applicant, or any owner of a business entity applicant with a controlling interest, met all of the following criteria:

- Was at least 21 years of age.
- Had a high school education or its equivalent.
- Had not been convicted of a felony in the five years immediately before the date of application.
- Provided evidence of United States citizenship or permanent resident status.

The applicant would have to include evidence that at least one officer or employee of the special police agency met one or more of the following:

- He or she was employed as a licensed law enforcement officer in Michigan or another state for at least three years.
- He or she was employed at a special police or licensed security agency in this or another state for at least three years as an employee of the applicant seeking licensure, and had experience that was reasonably equivalent to at least four years of work in a supervisory capacity with rank above that of patrol officer.
- He or she was a graduate with a bachelor or associate degree in the field of police administration or industrial security from an accredited institution of higher education.
- He or she served in the United States Armed Forces as a military police officer or in an equivalent job classification.

License Issuance

If an applicant had not previously been denied a license under the proposed Act, or had not had a license previously issued under the Act suspended or revoked, the MSP could issue a temporary license to the applicant. A temporary license would be valid until one or more of the following occurred but not longer than 120 days:

- The Department completed the investigation and approval required for licensure under the Act.
- Compliance with proposed bonding or insurance requirements was confirmed.
- The applicant failed to meet one or more of the requirements for licensure.

The MSP would have to issue a license to an applicant when the requirements of the Act were met, the Department had received a completed application, and it was satisfied of the applicant's good character, competence, and integrity.

A license would be valid for three years but the MSP could revoke it for good cause shown. A licensed special police agency could request a hearing on the revocation of its license. A hearing would have to be conducted as a contested case under the Administrative Procedures Act.

The MSP would have to prescribe the form of a license certificate and provide a certificate to an applicant upon licensure.

Contract between Special Police Agency & Legally Organized Entity

A legally organized entity could enter into a contract with a special police agency to provide law enforcement services for a specified period of time and in a specified geographic location in Michigan. A contract would have to provide all of the following:

- The length of time the agency would be providing law enforcement services.
- A description of the geographic area in which the agency would be providing the services, and the geographic boundaries of the area in which the special police officers would have arrest authority.
- The arrest procedures with which special police officers would have to comply and the local law enforcement agency or agencies that the officers would have to contact in the event of an arrest or other incident involving the officers in the performance of their duties.
- The number of special police officers who would be deployed by the agency in the geographic area.

Also, if the legally organized entity entering into a contract with a special police agency were a local unit of government, the contract would have to include a written statement of approval by the prosecuting attorney or sheriff of the county in which the special police agency would be providing law enforcement services. If the services were to be provided within a municipality that had a police department, the written approval of the chief of police, instead of that of the sheriff, could be obtained.

Employment of Special Police Officer

Before an agency hired an applicant as a special police officer, the agency would have to require the applicant to undergo a criminal background check in the same manner as required by the Commission on Law Enforcement Standards before an individual may become a licensed law enforcement officer in the State. The MSP would have to assist an agency in completing the criminal history check. If an individual were licensed currently or within the past two years as a law enforcement officer under the Michigan Commission on Law Enforcement Standards (MCOLES) Act, and his or her license were not revoked, the individual would not have to undergo a criminal history check.

A special police officer would have the same authority to arrest a person without a warrant as a public police officer under the Code of Criminal Procedure when the special police officer was providing law enforcement services as specified in a contract between a legally organized entity and a special police agency. A special police officer's arrest authority would be limited to the time during which he or she was providing law enforcement services under such a contract.

Except for an individual currently participating in a State, county, or municipal retirement system as a current or retired employee, a special police officer would not be eligible to participate in any such retirement system.

The uniforms, vehicles, and badges of a special police agency could be similar to those of a local law enforcement agency, but there would have to be some insignia or mark indicating that the officer or equipment was provided by an agency.

Immunity from Liability

Any function performed by a special police officer under a contract between a special police agency and a legally organized entity would be considered to have been for public and governmental purposes, and all immunities from liability enjoyed by the State or its political subdivisions and their officers, agents, and employees would extend to the special police agency when providing law enforcement services as authorized by the proposed Act.

Officers or employees of a special police agency providing law enforcement and related services to a legally organized entity under a contract with a special police agency would be considered agents of the State for tort liability and immunity purposes. An officer or employee providing services under a contract would not be liable on account of any act or omission made in good faith on his or her part, or on account of the maintenance or use of any equipment or supplies in connection with the services being provided by the officer or employee. "Good faith" would not include willful misconduct, gross negligence, or recklessness.

Reciprocity

The Commission could promulgate rules that would permit a special police agency to enter into a reciprocal agreement with other states that would provide for the recognition of registration certificates or licenses issued to a comparable agency, a security officer, or a special investigator in other states.

MCL 777.11b (S.B. 525)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 594

The bill would have an indeterminate fiscal impact on the MSP. The bill would authorize the MSP, perhaps under the MCOLES Act, which already provides a framework for the licensure and regulation of law enforcement officers and private security police officers, to license special police agencies. The MSP would be required to provide an online application for licensure, process license applications including verification and investigation to determine qualification for licensure, and issue a license to an applicant when the requirements of licensure were met. The MSP also would be required to assist an agency in the completion of a criminal history check for an applicant as a special police officer, in the same manner as required by the MCOLES Act before an individual may become a licensed police officer, or verify that an applicant was licensed currently or within the past two years as a law enforcement officer under MCOLES Act.

The bill would require that the MSP charge an application fee of \$200 if the applicant were an individual or sole proprietorship, or \$300 if a business entity. Revenue collected from application fees would have to be deposited in the State General Fund. It is unclear whether the "reasonable fee" the MSP would have to charge for processing an application would be in addition to the application fee.

While the MSP, under MCOLES, has a staff currently assigned to the regulation of law enforcement, the Department would incur additional responsibilities under the bill, at a cost that is unclear, especially in recognition of the fact that the number of special police agencies who would seek licensure under the bill cannot be known at this time. Unless the bill allowed an additional processing fee, which is unclear, there would be no additional revenue provided under the bill to fund its provisions, and additional General Fund appropriations could be required.

The bill also would require certain applicants for special police officers to undergo a criminal history background check, which would require them to submit their fingerprints to the MSP for a criminal records check through the FBI. The current cost of each background check, payable to the MSP, which includes a search of State and Federal fingerprint databases, is \$42 (\$30 State fee, \$12 Federal fee). In addition, under current law, a law enforcement agency or vendor that takes fingerprint impressions from an individual for submission to the MSP may charge a nominal fee for doing so (often \$15 or less, if anything). The bill does not specify who would pay this cost.

The proposed felony also could have a negative fiscal impact on the State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increases in fine revenue increases funding to public libraries.

Senate Bill 595

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State. According to the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law), the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.