

Legislative Analysis



REVISE REFERENCES TO MCOLES ACT

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House Bill 5494 (H-1)
Sponsor: Rep. Vanessa Guerra

Analysis available at
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House Bill 5495 (H-1)
Sponsor: Rep. Stephanie Chang

House Bill 5501 without amendment
Sponsor: Rep. Kathy Crawford

House Bill 5496 without amendment
Sponsor: Rep. Peter J. Lucido

Senate Bill 92 (H-2)
Senate Bill 93 without amendment
Senate Bill 94 (H-2, as proposed)
Senate Bills 866 & 867 without amendment
Sponsor: Sen. Tonya Schuitmaker

House Bills 5497 (H-1)
House Bill 5498 without amendment
Sponsor: Rep. Clint Kesto

Senate Bills 95 & 96 without amendment
Sponsor: Sen. Margaret E. O'Brien

House Bill 5499 without amendment
Sponsor: Rep. Triston Cole

House Bill 5500 without amendment
Sponsor: Rep. Jim Tedder

Senate Bills 868 & 869 without amendment
Sponsor: Rick Jones

House Committee: Judiciary
Senate Committee: Judiciary (SB 92-96 and 866-869)
Revised on 5-18-16

REVISED FLOOR SUMMARY:

Senate Bill 92 amends the MCOLES Act to, among other things, rename the act, codify provisions from multiple Executive Reorganization Orders, and require a license (instead of a certificate) be granted to a person eligible for employment as a law enforcement officer.

House Bills 5494-5501

The bills would amend various statutes to refer to peace officers or police officers who are licensed or certified under the Michigan Commission on Law Enforcement Standards Act, rather than those certified under the Commission on Law Enforcement Standards Act, and to revise current references to the Commission on Law Enforcement Standards Act to refer instead to the Michigan Commission on Law Enforcement Standards Act.

Senate Bill 93 revises the use of the Michigan Justice Training Fund.

Senate Bill 94 allows the Michigan Commission on Law Enforcement Standards to have access, for certain purposes, to a nonpublic record of a discharge and dismissal of a controlled substance violation maintained by the Department of State Police.

Senate Bills 95, 96, and 866-869 amend various laws to revise citations referring to the MCOLES Act and certain funds.

Each of the bills is tie-barred to Senate Bill 92, meaning that none can become law unless SB 92 is also enacted.

Each of the bills takes effect 90 days after enactment.

The Michigan Commission on Law Enforcement Standards (MCOLES), a Type I agency within the Michigan Department of State Police, has statutory responsibilities under the Commission on Law Enforcement Standards Act and the Michigan Justice Training Commission Act. Among its duties, MCOLES prepares and publishes mandatory minimum standards for the recruitment, selection, training, licensing, and license retention for law enforcement officers in the state. MCOLES also administers two other statutes which includes licensing private security police agencies and commissioning railroad police, as well as administering the Public Safety Officers Benefit Act. Executive Reorganization Order (ERO 2001-2) revised the name of the act and consolidated two commissions into one and a later ERO (2008-19) expanded the membership of the commission. (Information provided on the Michigan Commission on Law Enforcement Standards' website: <https://www.michigan.gov/mcoles>.)

Senate Bill 92 renames the Commission on Law Enforcement Standards Act as the *Michigan Commission on Law Enforcement Standards Act* (MCL 28.601 et al.). The bill also incorporates changes made by the 2001 and 2008 Executive Reorganization Orders. Significant other changes made by the bill are as follows:

- Increase the membership of MCOLES to include a representative of deputy sheriffs.
- Require MCOLES to promulgate rules governing law enforcement officer licensing standards, instead of establishing minimum standards.
- Require MCOLES to grant a license, rather than certification, to a person who meets the standards and will be employed as a law enforcement officer. The definition of "license" includes a certificate issued under the act prior to the bill's effective date.
- Establish separate licensure requirements for sheriffs, tribal law enforcement officers, locally appointed fire arson investigators, and private college security officers.
- Authorize MCOLES to investigate alleged violations of the act or rules promulgated under it.
- Specify that a petition for judicial review of a final decision or order of MCOLES could be adjudicated only in the Court of Claims, and the Commission would have standing in that court for an action to compel compliance with the act.
- Revise provisions regarding police training academies.
- Require a licensed law enforcement officer to inform MCOLES when he or she was charged with a particular offense or was subject to a personal protection order.

- Revise provisions related to the Law Enforcement Officers Training Fund, including the deposit of fees related to certain training and licensing fees, allowing money or assets from any source to be deposited in the fund, and requiring money in the fund at the close of a fiscal year to remain in the fund and not lapse to the general fund.

The bill will also authorize MCOLES to use money granted to it by the Department of State Police from the Secondary Road Patrol and Training Fund to do the following:

- Reimburse law enforcement agencies for the reasonable costs they incurred in providing education to their employees who were enrolled in law enforcement training academies for the purpose of being employed by the agencies as law enforcement officers licensed under the act.
- For fiscal years 2015-16 and 2016-17 only, pay the reasonable expenses of performing the Commission's statutory functions authorized or required under the act.

The Commission could not be granted or use, within a single fiscal year, more than 5.7% of the Secondary Road Patrol and Training Fund for any purpose.

The bill will also repeal Sections 4 and 16 of the Act, which deal with MCOLES members' terms of office and the act's original effective date.

House Bill 5494 amends the Public Body Law Enforcement Agency Act (MCL 28.586 and 28.587). The bill revises a requirement of law enforcement agencies created under the act to establish and abide by a written policy pertaining to the requirements of Section 9d of the Commission on Law Enforcement Standards Act and also a requirement of public bodies that create law enforcement agencies under the act to comply with the requirements of Section 9d. Instead, an agency would have to establish and abide by a written policy pertaining to the requirement to maintain employment history records, and a public body must comply with the requirement to maintain employment history records for officers in its employ, under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5495 amends the Wolf-Dog Cross Act (MCL 287.1002). The bill revises the definition of "law enforcement officer" to include a peace officer who is trained and *licensed or* certified under the Michigan Commission on Law Enforcement Standards Act.

House Bill 5496 amends the Michigan Unarmed Combat Regulatory Act (MCL 338.3633). The bill revises requirements of an "inspector" to include an individual who is *licensed or* certified, or previously *licensed or* certified by the Commission of Law Enforcement Standards under the *Michigan* Commission on Law Enforcement Standards Act.

House Bill 5497 amends Public Act 372 of 1927, which regulates handguns (MCL 28.421, 28.422a, and 28.432a). The bill revises several references to a certificate issued under the Commission on Law Enforcement Standards Act to instead refer to a *license or* certificate issued under the *Michigan* Commission on Law Enforcement Standards Act.

House Bill 5498 amends Public Act 563 of 2006, which restricts the use and disclosure of certain statements made by law enforcement officers (MCL 15.391). In the definition of "law enforcement officer", the bill would refer to a person trained and *licensed or* certified under the *Michigan* Commission on Law Enforcement Standards Act.

House Bill 5499 amends the Legislative Sergeant at Arms Police Powers Act (MCL 4.382). The bill would specify that a sergeant at arms or assistant sergeant at arms commissioned as a police officer under the act is subject to the training and *licensure or* certification requirements under the *Michigan* Commission on Law Enforcement Standards Act.

In addition, an annual report on the activities of the sergeants at arms required to be given to the House Oversight and Operations Committee and Senate Government Operations Committee would instead be given to the standing committees of the House of Representatives and Senate concerned with government operations and oversight, respectively.

House Bill 5500 amends the Michigan Vehicle Code (MCL 257.42 and 257.726c). The bill revises several references to a certificate issued under the Commission on Law Enforcement Standards Act to instead refer to a *license or* certificate issued under the *Michigan* Commission on Law Enforcement Standards Act.

House Bill 5501 amends the Large Carnivore Act (MCL 287.1102). The bill revises a reference to a certificate issued under the Commission on Law Enforcement Standards Act to instead refer to a *license or* certificate issued under the *Michigan* Commission on Law Enforcement Standards Act.

Senate Bill 93 amends Public Act 302 of 1982, which created the Michigan Justice Training Commission and the Michigan Justice Training Fund (MCL 18.421 et al.). The bill will do the following:

- Delete and replace most of the provisions of the act, regarding use of the Michigan Justice Training Fund.
- Require MCOLES to use the Fund to make law enforcement distributions to law enforcement agencies, pay the reasonable expenses of providing MCOLES staff services and administering and enforcing the act and the MCOLES Act, and awarding grants.
- Specify that money in the Fund that was not distributed in a fiscal year in which it was meant to be used for the purposes described above would remain in the Fund and could be used in future fiscal years for the designated purpose.
- Require MCOLES to conduct an annual registration of law enforcement agencies to verify each agency's roster of full-time and part-time officers and the number of hours for which they were compensated in the most recent calendar year.
- Require MCOLES annually to distribute 60% of the Fund for law enforcement distributions, in two semiannual installments, on a per-full-time equated basis to eligible entities based on the number of full-time equated officers employed.

- Cap the reported hours of compensation at 2,080 hours for any individual officer, for purposes of the law enforcement distribution.
- Regulate an eligible entity's use of funds from a law enforcement distribution, and limit the use of a distribution to certain training and educational purposes.
- Allow MCOLES to award grants for the provision of criminal justice in-service training for law enforcement officers.
- Prohibit MCOLES from awarding grants to a professional association.
- Regulate a grantee's use of funds from a grant award.
- Require criminal justice in-service training courses to be registered through the MCOLES Information and Tracking Network.
- Specify that the Fund's books, records, and accounts could be subject to audit by the Auditor General every two years, instead of requiring an audit every two years.

Senate Bill 94 amends the Public Health Code (MCL 333.7411). The code allows a court to defer the proceedings of certain controlled substance violations if the person has no prior drug-related convictions. Upon successful completion of probation, the court may discharge the person and dismiss the proceedings without adjudication of guilt. The Department of State Police must retain a nonpublic record of the discharge and dismissal. Access to the nonpublic record is restricted and allowed only for stated statutory purposes.

The bill would require the nonpublic record to also be open to MCOLES as follows:

- The court placed the individual on probation after March 25, 2002.
- The Commission could use the record to determine whether the individual met the requirements for licensure as a law enforcement officer, if the individual were seeking licensure at the time of the request.
- The Commission could use the record to determine whether the license or certification could be revoked, if the individual were licensed or certified as a law enforcement officer.
- The Commission could use the record to determine whether the individual met the requirements for admission, if he or she were seeking admission to a law enforcement training academy.
- The Commission could use the record to determine whether the individual met the waiver requirements, if he or she were seeking a waiver from the law enforcement officer minimum standards regarding training requirements.

Senate Bill 95 amends the Revised Judicature Act to revise citations to certain funds and the acts that created them (MCL 600.181).

Senate Bill 96 amends the Code of Criminal Procedure to refer to MCOLES and the MCOLES Act (MCL 763.11).

Senate Bill 866 amends provisions of the Natural Resources and Environmental Protection Act that involve enforcement of criminal laws to refer to the *Michigan Commission on Law Enforcement Standards Act* and to refer to officers *licensed* or certified under the MCOLES Act (MCL 324.11701 et al.).

Senate Bill 867 amends the Police Officer's and Fire Fighter's Survivor Tuition Grant Act, which provides for the waiver of tuition at Michigan community colleges and universities for the surviving spouse and children of police officers and firefighters killed in the line of duty, to make the same changes to that act as SB 866 (MCL 390.1242).

Senate Bill 868 amends sections of the Revised Judicature Act that govern personal protection orders (PPOs) in domestic violence and stalking situations, and that require the petitioner for a PPO to notify the court of the respondent's occupation before a PPO is issued if the respondent is a police officer *licensed or* certified by the *Michigan* Commission on Law Enforcement Standards Act, or meets other criteria listed in the Revised Judicature Act (MCL 600.2950 and 600.2950a).

Senate Bill 869 amends a section of the Michigan Penal Code that contains certain prohibitions regarding instruction in the use of a firearm or an explosive incendiary device, and exempts an act of a law enforcement officer that is performed in the lawful performance of his or her official duties as a law enforcement officer to refer a peace officer trained and *licensed or* certified under the *Michigan* Commission on Law Enforcement Standards Act (MCL 750.528a).

FISCAL IMPACT:

House Bills 5494-5501: The bills have no fiscal implications for state or local units of government.

Senate Bills 92-96: The bills would likely have a nominal fiscal impact on the state in the short term; however, they would create a funding shortfall for the Michigan Commission on Law Enforcement Standards (MCOLES), beginning during FY 2017-18.

Since FY 2001-02, MCOLES has received approximately 5.6% of the annual revenue deposited into Secondary Road Patrol and Training Fund (SRP&TF), which was expended for both administrative purposes and awarding training grants to local law enforcement agencies. A funding cap of 5.7% would likely have no immediate impact on how the MCOLES operates. However, due to decreasing appropriations from GF/GP and the Michigan Justice Training Fund, the proportion of the SRP&TF that MCOLES expends for administrative purposes has increased, on average, by 7.0% per year since FY 2001-02. Prohibiting MCOLES from expending money from the SRP&TF for administrative purposes beginning in FY 2017-18 would result in an ongoing funding shortfall. In FY 2014-15 approximately \$491,000 of the \$9.8 million expended from the SRP&TF was expended by MCOLES for administrative purposes.^[1]

Senate Bills 93-96 and 866-869: The bills would likely have no fiscal impact on state or local law enforcement agencies or state or local units of government.

^[1] For more information on MCOLES funding, see the HFA memo "MCOLES Training Funds", accessible at: http://www.house.mi.gov/hfa/PDF/StatePolice/MCOLES_Training_Funds_Memo.pdf.

POSITIONS:

The following entities testified in or indicated support for one or more of the bills:

The Michigan Commission on Law Enforcement Standards (MCOLES)

ACLU of Michigan

Fraternal Order of Police

Huron-Clinton Metroparks

Michigan Association of Chiefs of Police

Wayne County Airport Authority

Deputy Sheriff's Association

Police Officer Association of Michigan (POAM)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.