32-LS0362\W
Radford
4/22/22

HOUSE CS FOR CS FOR SENATE BILL NO. 81(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS OLSON, Gray-Jackson, Myers, Holland, Shower, Revak, Begich, Wielechowski, Kiehl, Stedman, Bishop, Stevens, Hoffman, Kawasaki, Micciche

A BILL

FOR AN ACT ENTITLED

"An Act requiring background investigations of village public safety officer applicants by the Department of Public Safety; relating to the village public safety officer program; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 12.62.400(a) is amended to read:

(a) To obtain a national criminal history record check for determining a person's qualifications for a license, permit, registration, employment, or position, a person shall submit the person's fingerprints to the department with the fee established by AS 12.62.160. The department may submit the fingerprints to the Federal Bureau of Investigation to obtain a national criminal history record check of the person for the purpose of evaluating a person's qualifications for

(1) a license or conditional contractor's permit to manufacture, sell, offer for sale, possess for sale or barter, traffic in, or barter an alcoholic beverage under AS 04.11;

(2) licensure as a mortgage lender, a mortgage broker, or a mortgage loan originator under AS 06.60;

(3) admission to the Alaska Bar Association under AS 08.08;

(4) licensure as a collection agency operator under AS 08.24;

(5) a certificate of fitness to handle explosives under AS 08.52;

(6) licensure as a massage therapist under AS 08.61;

(7) licensure to practice nursing or certification as a nurse aide under AS 08.68;

(8) certification as a real estate appraiser under as 08.87;

(9) a position involving supervisory or disciplinary power over a minor or dependent adult for which criminal justice information may be released under AS 12.62.160(b)(9);

(10) a teacher certificate under AS 14.20;

(11) a registration or license to operate a marijuana establishment under AS 17.38;

(12) admittance to a police training program under AS 18.65.230 or for certification as a police officer under AS 18.65.240 if that person's prospective employer does not have access to a criminal justice information system;

(13) licensure as a security guard under AS 18.65.400 - 18.65.490;

(14) a concealed handgun permit under AS 18.65.700 - 18.65.790;

(15) licensure as an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster under AS 21.27;

(16) serving and executing process issued by a court by a person designated under AS 22.20.130;

(17) a school bus driver license under AS 28.15.046;

(18) licensure as an operator or an instructor for a commercial driver training school under AS 28.17;

(19) registration as a broker-dealer, agent, investment adviser representative, or investment adviser under AS 45.56.300 - 45.56.350;

(20) licensure, license renewal, certification, certification renewal, or

payment from the Department of Health and Social Services of an individual and an entity subject to the requirements for a criminal history check under AS 47.05.310, including

(A) a public home care provider described in AS 47.05.017;

(B) a provider of home and community-based waiver services financed under AS 47.07.030(c);

(C) a case manager to coordinate community mental health services under AS 47.30.530;

(D) an entity listed in AS 47.32.010(b), including an owner, officer, director, member, partner, employee, volunteer, or contractor of an entity; or

(E) an individual or entity not described in (A) - (D) of this paragraph that is required by statute or regulation to be licensed or certified by the Department of Health and Social Services or that is eligible to receive payments, in whole or in part, from the Department of Health and Social Services to provide for the health, safety, and welfare of persons who are served by the programs administered by the Department of Health and Social Services**;**

(21) employment as a village public safety officer under AS 18.65.672 or certification as a village public safety officer under AS 18.65.682.

*** Sec. 2.** AS 18.65.080 is amended by adding a new subsection to read:

(b) The Department of Public Safety shall investigate an individual who applies to be employed as a village public safety officer under AS 18.65.672 or certified as a village public safety officer under AS 18.65.682 upon receipt of the materials listed in AS 18.65.674(a)(1) from a village public safety officer grant recipient to determine whether the individual has been convicted of a disqualifying crime listed in AS 18.65.672(b).

*** Sec. 3.** AS 18.65.670 is repealed and reenacted to read:

Sec. 18.65.670. Village public safety officer program. (a) The village public safety officer program is created in the department, with funding appropriated to the department and disbursed by the commissioner through grants made under this

section. The purpose of the program is to appoint, train, supervise, support, and retain persons to serve as village public safety officers.

(b) With funds appropriated for that purpose, the commissioner shall provide grants to nonprofit regional corporations and Alaska Native organizations for training and employment of village public safety officers. If a nonprofit regional corporation for a village or Alaska Native organization for the village does not exist or declines a grant under this subsection, the commissioner may provide the grant to a municipality with a population of less than 10,000 willing to administer the grant for the village. If a nonprofit regional corporation or Alaska Native organization declines a grant, the commissioner shall consult with the corporation or organization before awarding the grant to a municipality.

(c) The commissioner shall annually accept applications from entities described in (b) of this section for village public safety officer grants. Grant applicants may apply to employ village public safety officers in participating villages located in the applicant's region. An application must include

(1) a projected budget, including administrative costs;

(2) a list of villages in which the applicant plans to employ village public safety officers; and

(3) other information required by the commissioner.

(d) The commissioner shall enter into a written agreement with a grant recipient before providing grant funding. The agreement must require the grant recipient to

(1) comply with state and federal law;

(2) provide a salary and benefit schedule for the village public safety officer;

(3) be named as the employer of the village public safety officer; and

(4) maintain insurance, independently, or with the assistance of the department, that includes coverage for premiums as follows:

(A) workers' compensation insurance as required under AS 23.30;

(B) comprehensive general liability insurance, including

professional practice insurance for police with

(i) a limit not less than $1,000,000; and

(ii) the state, including an officer, employee, or agent of the state, listed as an additional named insured.

(e) An award of grant funding, depending on the funds awarded, must provide for at least one village public safety officer for each village included in a grant agreement entered into under (d) of this section. A grant recipient may assign more than one village public safety officer to a village and request additional funding for the additional village public safety officer. The commissioner may approve the request for additional funding if the grant recipient provides justification reasonably related to the duties of a village public safety officer and other public safety needs.

(f) A grant recipient may assign a traveling village public safety officer to serve multiple villages within the grant recipient's region.

(g) A grant recipient shall

(1) keep original financial, personnel, and other records relating to a village public safety officer for at least three years after the officer's termination of employment and, upon request, provide that information to the department;

(2) provide annual financial audits to the commissioner;

(3) facilitate site visits by the department to monitor public safety officer performance and compliance with state and federal law;

(4) notify the commissioner if the grant recipient fails to comply with state or federal law;

(5) timely notify the department if a village public safety officer resigns or vacates a position; and

(6) timely notify and submit a written report to the department if a village public safety officer points a firearm in the direction of another person or discharges a firearm while on duty.

(h) The commissioner may, in consultation with grant recipients, as provided in (k) of this section, adopt regulations related to village public safety officers, including establishing minimum standards and training, physical fitness requirements, criteria for participation by a community, a municipality, an Alaska Native

organization, or a corporation, and the interaction between the department and village public safety officers. If the commissioner adopts regulations regarding training for village public safety officers, the training must be consistent with the standards in AS 18.65.676 and disability training under AS 18.65.220(3). The commissioner of corrections may, in consultation with grant recipients, adopt regulations related to the functions of village public safety officers providing pretrial, probation, and parole supervision.

(i) A grant recipient may charge its federally approved indirect costs to the village public safety officer program grant if the statewide average of indirect costs does not exceed 35 percent.

(j) The commissioner may not withhold, without reason, approval of a funding request made under a grant award. The commissioner shall timely disburse grant funds. A grant recipient may use funding for items reasonably related to public safety and village public safety officer duties under AS 18.65.670 - 18.65.688.

(k) The commissioner and the commissioner of corrections shall

(1) ensure all relations with a federally recognized tribal government that is the incorporator of a nonprofit regional corporation are conducted on a government-to-government basis;

(2) ensure the department consults with a grant recipient

(A) before implementing a policy or regulation that affects the recipient and as early as possible in the development of a new or revised policy or regulation;

(B) on the state policies and regulations the grant recipient considers necessary, as well as the substance of the policies and regulations;

(3) to the extent possible, use consensual mechanisms to develop policies and regulations, including negotiated rulemaking processes;

(4) respect tribal sovereignty in consultations with grant recipients;

(5) ensure consultations with grant recipients are open and candid to enable interested parties to accurately assess potential effects; and

(6) ensure the removal of procedural impediments to working directly and effectively with grant recipients on programs that affect the governmental rights

of a tribe.

(*l*) The commissioner shall designate an official within the department who has the primary responsibility for compliance with this section. The official shall develop and annually review departmental procedures for compliance with this section. The department shall provide to all grant recipients the results of the annual review and post the results on the Internet website of the department.

*** Sec. 4.** AS 18.65 is amended by adding new sections to read:

Sec. 18.65.672. Village public safety officer qualifications. (a) A grant recipient may employ a person as a village public safety officer if the individual

(1) is at least 21 years of age;

(2) is a citizen of the United States or a resident alien;

(3) is of good moral character;

(4) has obtained a high school diploma or a general education development diploma or its equivalent;

(5) satisfies the physical requirements established in regulation by the department;

(6) has not been previously convicted

(A) of a felony;

(B) of a sex offense as defined in AS 12.63.100;

(C) of a misdemeanor crime involving domestic violence unless at least 10 years have passed since the date of the conviction, the conviction was not for an offense against an intimate partner, spouse, child, or parent, and the department grants a waiver allowing the individual to access the criminal justice information system;

(D) of a misdemeanor if less than five years has elapsed since the individual's date of conviction for the offense;

(E) two or more times of

(i) misdemeanor operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance under AS 28.35.030;

(ii) misdemeanor refusal to submit to a chemical test

under AS 28.35.032; or

(iii) a combination of the offenses in (i) and (ii) of this subparagraph;

(F) of manufacturing, transporting, or delivering an alcoholic beverage in violation of a local option under AS 04.11 or a municipal ordinance or a controlled substance, unless at least 10 years has elapsed; or

(G) of possession of a controlled substance as defined in AS 11.71.900, other than marijuana, unless the individual was under 21 years of age at the time of the possession and the possession occurred more than 10 years before the date of hire;

(7) has not been denied a village public safety officer certification or had a certification revoked; and

(8) has not been denied police officer certification, had a certificate revoked, or surrendered a certificate in this state or another jurisdiction.

(b) A grant recipient may not use grant money to employ a village public safety officer for a period of more than 24 months unless the officer obtains a village public safety officer certificate from the department under AS 18.65.682. Upon written application from a grant recipient, the department may, in its discretion, extend this period up to six months to permit the officer to complete the training required under AS 18.65.676, if the officer is unable to do so in the first 24 months of employment because of an illness, injury, or emergency.

(c) In this section,

(1) "good moral character" means the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States; for purposes of this section, a determination of lack of good moral character may be based on a consideration of all aspects of a person's character;

(2) "previously convicted" means having been convicted of a crime described in (a) of this section or a law or ordinance of another jurisdiction with elements similar to the crimes listed in (a) of this section. A conviction for which the person received a suspended entry of judgment, suspended imposition of sentence,

expungement, or pardon is a conviction for purposes of this section, unless the conviction was for a misdemeanor crime committed by the individual when the individual was under 21 years of age.

Sec. 18.65.674. Background investigations. (a) Before employing an individual as a village public safety officer, a grant recipient shall

(1) submit to the commissioner the individual's

(A) completed application and personal and medical history, on forms prepared by the department;

(B) proof of age, citizenship status, and education; and

(C) fingerprints, the fees required by the department under AS 12.62.160 for criminal justice information and a national criminal history record check, and other information sufficient to complete a background check consisting of a fingerprint check of national criminal records and criminal records of the state or states in which the individual has resided for the past 10 years; the department shall conduct a criminal justice information and national criminal history record check under AS 12.62;

(2) review the criminal justice information and national criminal history record check completed by the department; and

(3) review the results of the individual's physical examination and physician certification.

(b) Personnel and training information that the department or a grant recipient receives about a village public safety officer is confidential and available only for review by a grant recipient, the department, or that officer. A village public safety officer or an individual who applies for employment as a village public safety officer may not review information that another individual supplied with the understanding that the information or its source would remain confidential, unless the information serves as the basis for a decision to deny or revoke a certificate under AS 18.65.684.

Sec. 18.65.676. Training. (a) A village public safety officer basic training program must provide

(1) a physical training program that includes instruction in physical methods of arrest, use of batons, use of chemical defensive weapons, and electronic

control weapons;

(2) instruction in

(A) the state's criminal and procedural law;

(B) the state's criminal justice system;

(C) police procedures;

(D) disabilities training described under AS 18.65.220(3);

(E) domestic violence and sexual assault prevention and response procedures;

(F) emergency trauma technician training;

(G) search and rescue training;

(H) rural fire protection specialist training.

(b) An individual seeking a village public safety officer certificate under AS 18.65.682 shall attend all sessions of the basic training required under (a) of this section, unless the director of the training program approves an absence. An individual who is absent for more than 10 percent of the total hours of instruction has not successfully completed basic training.

(c) An individual who fails to comply with the attendance and performance requirements of the training program may be dismissed from the training. The department may not consider a dismissed individual to have successfully completed basic training.

(d) If a village public safety officer receives training that the department did not provide and the entity conducting the training provides a description of the training to the department, the department may take that training into account in determining the completion of basic training and accept other police officer or firefighter training and experience that covers the subject matter required under (a) of this section.

Sec. 18.65.678. Firearms training. (a) A village public safety officer may not, except in an emergency, carry a firearm in the performance of the officer's duties until the officer has successfully completed

(1) a basic firearms training program that is certified by the Alaska Police Standards Council or substantially similar training as determined by the department;

(2) a psychological examination conducted by a mental health professional; and

(3) all annual firearm qualification requirements.

(b) In determining the successful completion of basic firearms training, the department may consider previous training and experience that is substantially similar to the training required under (a) of this section.

Sec. 18.65.682. Village public safety officer certification. The department shall issue a village public safety officer certificate to an individual who

(1) has satisfactorily completed 12 months as a full-time paid village public safety officer without a break in service longer than 90 consecutive days or nonconsecutive breaks in service totaling 120 or more days;

(2) meets the standards in AS 18.65.672;

(3) has successfully completed

(A) a basic training program that meets the requirements under AS 18.65.676; and

(B) a background information check under AS 18.65.674(a); and

(4) attests to the law enforcement code of ethics.

Sec. 18.65.684. Denial, revocation, or lapse of certificate. (a) The department may deny an individual's application for a village public safety officer certificate or revoke a village public safety officer certificate in accordance with AS 44.62 (Administrative Procedure Act) if

(1) the individual knowingly makes a false statement in an application or other document required for employment or certification; or

(2) after the date of hire, has

(A) been convicted of a

(i) felony;

(ii) misdemeanor crime involving domestic violence; or

(iii) misdemeanor crime of dishonesty, a crime that resulted in serious physical injury to another person, or of operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic

beverage, inhalant, or controlled substance two or more times;

(B) illegally used, possessed, manufactured, transported, or delivered an alcoholic beverage in violation of a local option under AS 04.11 or a municipal ordinance or a controlled substance; or

(C) used, sold, cultivated, transported, manufactured, or distributed marijuana.

(b) The department is not required to deny an individual's application for a certificate or revoke a certificate if the individual or holder of the certificate establishes by clear and convincing evidence that, in connection with a conviction for a misdemeanor crime involving domestic violence, the underlying conviction

(1) has been expunged or set aside;

(2) is for an offense for which the officer has been pardoned; or

(3) is for an offense for which the officer has had civil rights restored that were lost upon the conviction.

(c) The holder of a certificate shall immediately return the certificate to the department upon notification of the revocation.

(d) An individual who is denied a certificate or a holder whose certificate is revoked may appeal to the commissioner for reversal of the denial or revocation. The appeal must be received in writing within 30 days after the date of the notice of denial or revocation and must set out the reasons for the appeal. The commissioner or the commissioner's designee shall issue a written decision within 45 days after receipt of the appeal.

(e) A certificate lapses if the holder is not employed as a full-time village public safety officer for a period of 12 consecutive months.

(f) An individual may request reinstatement of a lapsed certificate after undergoing additional training as determined by the department and serving an additional probationary period of up to 12 months, at the discretion of the commissioner in consultation with the grant recipient. A certificate may not be reinstated if the certificate has lapsed for more than 10 years.

Sec. 18.65.686. Powers and duties of village public safety officers. A village public safety officer who is certified under AS 18.65.682 has the power of a peace

officer of the state or a municipality and is charged with

(1) the protection of life and property in the state, including through

(A) fire prevention and suppression;

(B) provision of emergency medical services; and

(C) participation in and coordination of search and rescue efforts for missing or injured persons;

(2) providing pretrial, probation, and parole supervision to persons under supervision by communicating with and monitoring the activities and progress of these persons at the direction of pretrial services, probation, and parole officers;

(3) conducting investigations;

(4) enforcing

(A) the criminal laws of the state or a municipality;

(B) statutes or ordinances of the state or municipality punishable as a violation if the certified village public safety officer has completed training in that field of violation enforcement;

(5) providing local training programs on public safety; and

(6) the powers usually and customarily exercised by a peace officer.

Sec. 18.65.688. Definitions. In AS 18.65.670 - 18.65.688,

(1) "Alaska Native organization" means an organization listed in AS 47.27.070(a);

(2) "commissioner" means the commissioner of public safety;

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "department" means the Department of Public Safety;

(5) "marijuana" has the meaning given in AS 11.71.900;

(6) "village" means a community with a population less than 2,500 based on the most recent federal census.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. Notwithstanding the requirements in AS 18.65.672 and 18.65.676, enacted by sec. 4 of this Act, a person employed as a village public safety officer on the day

before the effective date of sec. 4 of this Act may continue to be employed as a village public safety officer without meeting the requirements in AS 18.65.672 and 18.65.676.

*** Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION. In implementing AS 18.65.670(h), added by sec. 3 of this Act, the Department of Public Safety shall continue to comply with regulations adopted under AS 18.65.670(c) regarding interactions between the Department of Public Safety and the village public safety officers.

*** Sec. 7.** AS 18.65.670(b) - (g), as repealed and reenacted by sec. 3 of this Act, take effect July 1, 2022.

*** Sec. 8.** Except as provided in sec. 7 of this Act, this Act takes effect immediately under AS 01.10.070(c).