

SENATE BILL REPORT

ESSB 5424

As Amended by House, February 28, 2024

Title: An act relating to flexible work for general and limited authority Washington peace officers.

Brief Description: Concerning flexible work for general and limited authority Washington peace officers.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Lovick, Holy, Dhingra, Frame, Keiser, Kuderer, Shewmake, Stanford, Valdez, Warnick and Wellman).

Brief History:

Committee Activity: Labor & Commerce: 1/19/23, 1/31/23 [DPS-WM, w/oRec].
Ways & Means: 2/22/23, 2/24/23 [DPS (LC), w/oRec].

Floor Activity: Passed Senate: 3/2/23, 49-0; 1/17/24, 48-0.
Passed House: 2/28/24, 96-0.

Brief Summary of Engrossed First Substitute Bill

- Allows general and limited authority Washington law enforcement agencies to adopt flexible work policies.
- Removes the requirement that an officer be employed full-time to be a general or limited authority Washington peace officer.
- Amends the definition of "law enforcement officer" in the Law Enforcement Officers' and Firefighters' Retirement System statutes to include, beginning July 1, 2024, certain officers employed less than full-time.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5424 be substituted therefor, and the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; MacEwen, Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5424 as recommended by Committee on Labor & Commerce be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Rivers, Assistant Ranking Member, Capital; Braun.

Staff: Amanda Cecil (786-7460)

Background: Law Enforcement Agencies and Peace Officers. In the Washington Mutual Aid Peace Officers Powers Act (Act), general authority Washington law enforcement agency (general LEA) means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of Washington, and any agency, department, or division of state government, having its primary function be the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general. The Washington State Patrol and the Department of Fish and Wildlife are general LEAs. General authority Washington peace officer (general PO) means any full-time, fully-compensated and elected, appointed, or employed officer of a general LEA who is commissioned to enforce the criminal laws of Washington generally.

Limited authority Washington law enforcement agency (limited LEA) means any agency, political subdivision, or unit of local government of Washington, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas. Limited LEAs include the state Gambling Commission, Utilities and Transportation Commission, Liquor and Cannabis Board, Department of Corrections, and other specified state agencies. Limited authority Washington peace officer (limited PO) means any full-time, fully-compensated officer of a limited LEA empowered by that agency to detect or apprehend violators of the laws in some or all of the limited

subject areas for which that agency is responsible. A limited PO may be a specially-commissioned Washington peace officer if otherwise qualified for such status under relevant state law.

Public Employees' Collective Bargaining Act. The Public Employees' Collective Bargaining Act (PECBA) provides for collective bargaining of wages, hours, and working conditions with employees of cities, counties, and other political subdivisions. Law enforcement officers have the authority to collectively bargain under PECBA, as do the officers of the Washington State Patrol and the Department of Fish and Wildlife. PECBA is administered by the Public Employment Relations Commission.

Law Enforcement Officers' and Firefighters' Retirement System. The Law Enforcement Officers' and Fire Fighters' Retirement System Plan 2 (LEOFF 2) is one of the public employee retirement systems managed by the Department of Retirement Systems (DRS), which provides retirement benefits to full-time, fully-compensated law enforcement officers and firefighters employed by the state, cities, counties, and special districts, who were first employed in an eligible position on or after October 1, 1977. LEOFF 2 is funded by member, employer, and state contributions, in addition to investment earnings.

Service credit is the number of years a member works in public service. A member earns one service credit for every 90 hours worked in a calendar month. A member can earn partial credit for fewer than 90 hours worked in a calendar month—70 to 90 hours equals 0.5 credits and 70 or fewer hours equals 0.25 credits. Members need five or more years of service credit to qualify for retirement and are eligible to retire at age 53. Early retirement is also an option under certain conditions. Benefits are determined by the member's service credit years and final average salary. For the purpose of being a LEOFF member, law enforcement officer means any person who is commissioned and employed by an employer on a full-time, fully-compensated basis to enforce the criminal laws of Washington generally, with specified qualifications in state statute.

Summary of Engrossed First Substitute Bill: Flexible Work Policies. General and limited LEAs are allowed to adopt a flexible work policy. The policy may:

- allow for general and limited POs to work less than full-time when feasible, such as supplementing work during peak hours with part-time officers;
- include alternative shift and work schedules that fit the needs of the agency;
- require an officer have a certain number of years of experience as a full-time officer or have additional training for the officer to work part-time or be eligible for any other types of flexible work.

An adopted flexible work policy may not cause the layoff or otherwise displace any full-time officer. Full-time and part-time officers working for the same LEA who are covered by a collective bargaining agreement must be in the same bargaining unit.

The bill does not alter:

- the duty of a LEA to meet their duty to bargain under PECBA or the Personnel System Reform Act.
- any existing collective bargaining unit or the provisions of any existing agreement; or
- any laws or workplace policies relating to restrictions on secondary employment for general and limited POs.

Definitions. The definitions of general and limited LEAs are amended to remove the requirement that an officer be full-time in the Act, which are referenced to describe which officers may participate in an adopted flexible work policy.

The definition of law enforcement officer in the LEOFF 2 statutes is amended to include, beginning July 1, 2024, any person who is commissioned and employed by an employer on a fully-compensated basis to enforce the criminal laws of Washington generally, on a less than full-time basis, and meeting the other specified qualifications.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: The intent of this bill is to increase the diversity of law enforcement agencies. The bill will have some guardrails and officers will be required to do all of the training and only participate for three-to-five years. This bill does not require agencies to do this but it gives them some options. We need to expand the pool of law enforcement applicants. This should also be expanded to include retirees who wish to come back to work on a less than full-time basis. Parents having the opportunity to work a flexible schedule while raising children is important. This bill addresses wellness in the law enforcement community, it is a stressful job. This bill would have helped me avoid difficult situations when I was pregnant and serving as a police officer. This bill hits home for me because of my lived experiences, raising two kids while on shift work is difficult. This is needed for the profession. I wish I did not have to take off six months due to not being able to find childcare, and this bill would have prevented that. We have many vacancies in our department and are not alone in the issue.

OTHER: It is important to protect the bargaining rights of current law enforcement officers. We have amended language to make sure the bill is clear, it will not affect collective bargaining rights. In 2021, Washington lost a net 495 law enforcement officers in 2021. We fully support creative measures to protect our law enforcement officers. This bill has particular challenges because our agencies can and some do adopt flexible work

schedules, but it has to be collectively bargained. If the Legislature wants to create the authority for flexible work to be adopted, we think additional language is needed.

Persons Testifying (Labor & Commerce): PRO: Senator John Lovick, Prime Sponsor; Sue Rahr; James Schrimpsheer, Washington State Fraternal Order of Police; Michelle Bennett, Edmond Police Department; Monica Alexander, CJTC.

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs; Teresa Taylor, WACOPS - Washington Council of Police and Sheriffs.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): OTHER: Washington employs fewer officers per capita than other states. This is a creative solution to address recruitment and retention issues and the Legislature should consider other solutions as well.

Persons Testifying (Ways & Means): OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Aligns the definitions of "reserve officer" and "specially commissioned Washington peace officer" in the Washington Mutual Aid Peace Officers Powers Act and the Criminal Justice Training Commission's statutes.
- Modifies the definition of reserve officer to mean any person who does not serve as a regularly employed, fully compensated peace officer, but who, when called by an agency into active service, is fully commissioned on the same basis as regularly employed, fully compensated officers.
- Removes from the definition of a "specially commissioned Washington peace officer" persons employed for security purposes by public institutions of higher education and the K-12 public school system.