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SENATE BILL 6404

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State of Washington

59th Legislature

2006 Regular Session

By Senators Johnson, Esser, Keiser, Delvin, Kline and Rasmussen; by request of Criminal Justice Training Commission

Read first time 01/12/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to the certification of tribal police officers;  
2 amending RCW 43.101.085 and 43.101.380; adding a new section to chapter  
3 43.101 RCW; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.101.085 and 2001 c 167 s 7 are each amended to read  
6 as follows:

7 In addition to its other powers granted under this chapter, the  
8 commission has authority and power to:

9 (1) Adopt, amend, or repeal rules as necessary to carry out this  
10 chapter;

11 (2) Issue subpoenas and administer oaths in connection with  
12 investigations, hearings, or other proceedings held under this chapter;

13 (3) Take or cause to be taken depositions and other discovery  
14 procedures as needed in investigations, hearings, and other proceedings  
15 held under this chapter;

16 (4) Appoint members of a hearings board as provided under RCW  
17 43.101.380;

18 (5) Enter into contracts for professional services determined by

1 the commission to be necessary for adequate enforcement of this  
2 chapter;

3 (6) Grant, deny, or revoke certification of peace officers under  
4 the provisions of this chapter;

5 (7) Designate individuals authorized to sign subpoenas and  
6 statements of charges under the provisions of this chapter; (~~and~~)

7 (8) Employ such investigative, administrative, and clerical staff  
8 as necessary for the enforcement of this chapter; and

9 (9) To grant, deny, or revoke certification of tribal police  
10 officers whose tribal governments have agreed to participate in the  
11 tribal police officer certification process.

12 NEW SECTION. Sec. 2. A new section is added to chapter 43.101 RCW  
13 to read as follows:

14 (1) Tribal governments may voluntarily request certification for  
15 their police officers. Tribal governments requesting certification for  
16 their police officers must enter into a written agreement with the  
17 commission. The agreement must require the tribal law enforcement  
18 agency and its officers to comply with all of the requirements for  
19 granting, denying, and revoking certification as those requirements are  
20 applied to peace officers certified under this chapter and the rules of  
21 the commission.

22 (2) Officers making application for certification as tribal police  
23 officers shall meet the requirements of this chapter and the rules of  
24 the commission as those requirements are applied to certification of  
25 peace officers. Application for certification as a tribal police  
26 officer shall be accepted and processed in the same manner as those for  
27 certification of peace officers.

28 (3) For purposes of certification, "tribal police officer" means  
29 any person employed and commissioned by a tribal government to enforce  
30 the criminal laws of that government.

31 **Sec. 3.** RCW 43.101.380 and 2001 c 167 s 10 are each amended to  
32 read as follows:

33 (1) The procedures governing adjudicative proceedings before  
34 agencies under chapter 34.05 RCW, the administrative procedure act,  
35 govern hearings before the commission and govern all other actions

1 before the commission unless otherwise provided in this chapter. The  
2 standard of proof in actions before the commission is clear, cogent,  
3 and convincing evidence.

4 (2) (~~On all appeals brought~~) In all hearings requested under RCW  
5 43.101.155, a five-member hearings panel shall both hear the case and  
6 make the commission's final administrative decision. Members of the  
7 commission or the board on law enforcement training standards and  
8 education may but need not be appointed to the hearings panels. The  
9 commission shall appoint as follows two or more panels to hear appeals  
10 from decertification actions:

11 (a) When (~~an appeal~~) a hearing is (filed) requested in relation  
12 to decertification of a Washington peace officer who is not a peace  
13 officer of the Washington state patrol, the commission shall appoint to  
14 the panel: (i) One police chief; (ii) one sheriff; (iii) two peace  
15 officers who are at or below the level of first line supervisor, who  
16 are from city or county law enforcement agencies, and who have at least  
17 ten years' experience as peace officers; and (iv) one person who is not  
18 currently a peace officer and who represents a community college or  
19 four-year college or university.

20 (b) When (~~an appeal~~) a hearing is (filed) requested in relation  
21 to decertification of a peace officer of the Washington state patrol,  
22 the commission shall appoint to the panel: (i) Either one police chief  
23 or one sheriff; (ii) one administrator of the state patrol; (iii) one  
24 peace officer who is at or below the level of first line supervisor,  
25 who is from a city or county law enforcement agency, and who has at  
26 least ten years' experience as a peace officer; (iv) one state patrol  
27 officer who is at or below the level of first line supervisor, and who  
28 has at least ten years' experience as a peace officer; and (v) one  
29 person who is not currently a peace officer and who represents a  
30 community college or four-year college or university.

31 (c) When a hearing is requested in relation to decertification of  
32 a tribal police officer, the commission shall appoint to the panel (i)  
33 either one chief or one sheriff; (ii) one tribal police chief; (iii)  
34 one peace officer who is at or below the level of first line  
35 supervisor, who is from a city or county law enforcement agency, and  
36 who has at least ten years' experience as a peace officer; (iv) one  
37 tribal police officer who is at or below the level of first line

1 supervisor, and who has at least ten years' experience as a peace  
2 officer; and (v) one person who is not currently a peace officer and  
3 who represents a community college or four-year college or university.

4 (d) Persons appointed to hearings panels by the commission shall,  
5 in relation to any decertification matter on which they sit, have the  
6 powers, duties, and immunities, and are entitled to the emoluments,  
7 including travel expenses in accordance with RCW 43.03.050 and  
8 43.03.060, of regular commission members.

9 (3) Where the charge upon which revocation or denial is based is  
10 that a peace officer was "discharged for disqualifying misconduct," and  
11 the discharge is "final," within the meaning of RCW 43.101.105(~~(+4)~~)  
12 (1)(d), and the officer received a civil service hearing or arbitration  
13 hearing culminating in an affirming decision following separation from  
14 service by the employer, the hearings panel may revoke or deny  
15 certification if the hearings panel determines that the discharge  
16 occurred and was based on disqualifying misconduct; the hearings panel  
17 need not redetermine the underlying facts but may make this  
18 determination based solely on review of the records and decision  
19 relating to the employment separation proceeding. However, the  
20 hearings panel may, in its discretion, consider additional evidence to  
21 determine whether such a discharge occurred and was based on such  
22 disqualifying misconduct. The hearings panel shall, upon written  
23 request by the subject peace officer, allow the peace officer to  
24 present additional evidence of extenuating circumstances.

25 Where the charge upon which revocation or denial of certification  
26 is based is that a peace officer "has been convicted at any time of a  
27 felony offense" within the meaning of RCW 43.101.105(~~(+3)~~) (1)(c), the  
28 hearings panel shall revoke or deny certification if it determines that  
29 the peace officer was convicted of a felony. The hearings panel need  
30 not redetermine the underlying facts but may make this determination  
31 based solely on review of the records and decision relating to the  
32 criminal proceeding. However, the hearings panel shall, upon the  
33 panel's determination of relevancy, consider additional evidence to  
34 determine whether the peace officer was convicted of a felony.

35 Where the charge upon which revocation or denial is based is under  
36 RCW 43.101.105 (1)(~~(, (2), (5), or (6)~~) (a), (b), (e), or (f), the  
37 hearings panel shall determine the underlying facts relating to the  
38 charge upon which revocation or denial of certification is based.

1           (4) The commission's final administrative decision is subject to  
2 judicial review under RCW 34.05.510 through 34.05.598.

3           NEW SECTION.   **Sec. 4.** This act takes effect January 1, 2007.

4           NEW SECTION.   **Sec. 5.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

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