

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB88HI

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Locke

3. Committee: Committee for Courts of Justice

4. Title: Law-enforcement officers & jail officers; various changes to provisions related to decertification.

5. Summary: Makes various changes to the provisions related to decertification of law-enforcement officers and jail officers. The bill requires the Department of Criminal Justice Services (DCJS), to oversee a decertification review process in accordance with the notice of decertification. It provides that the findings and decision of each individual law enforcement agency may be appealed to the Criminal Justices Services Board (Board) and that the final administrative decision of the Board may be then appealed and reviewed by a court.

The bill also allows DCJS to grant a continuance of any informal fact-finding conference or formal hearing upon motion by the decertified officer or his counsel or the Attorney General for good cause shown. The bill specifies when the Department is permitted or required to continue any informal fact-finding conference or formal hearing under different circumstances involving pending criminal charges or pending appeals. The bill requires an officer to remain decertified during a period of continuance of any informal fact-finding conference or formal hearing for a pending criminal charge unless the Department finds the officer's continued decertification may cause circumstances that constitute a manifest injustice to the officer, in which case the officer's certification may be reinstated during the period of continuance until the conviction becomes final. Current law allows the Board, when an officer's conviction has not become final, to decline to decertify such officer after considering the likelihood of irreparable damage to the officer if such officer is decertified during the pendency of an ultimately successful appeal, the likelihood of injury or damage to the public if the officer is not decertified, and the seriousness of the offense.

Additionally, the bill allows decertification of an officer who is terminated or resigns for an act committed while in the performance of his duties that compromises an officer's credibility, integrity, or honesty or that constitutes exculpatory or impeachment evidence in a criminal case. Current law allows decertification of an officer who is terminated or resigns for an act committed while in the performance of his duties that compromises an officer's credibility, integrity, honesty, or other characteristics that constitute exculpatory or impeachment evidence in a criminal case. The bill also specifies that the required notification to DCJS related to an officer being terminated or resigning (i) for engaging in serious misconduct; (ii) while such officer is the subject of a pending internal investigation involving serious misconduct; or (iii) for an act committed while in the performance of his duties that

compromises an officer's credibility, integrity, or honesty or constitutes exculpatory or impeachment evidence in a criminal case shall be within 48 hours of completion of an internal investigation. Under current law, such notification is required to be within 48 hours of the termination or resignation.

The bill also requires DCJS to establish standards and procedures for when DCJS may grant a petition for reinstatement of certification of a decertified officer. The bill directs DCJS to promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

The House substitute amends § 2.2-3711 (Closed meetings authorized for certain limited purposes) to provide for closed meetings or portions of meetings of the Board or DCJS concerning the decertification of an identifiable law-enforcement or jail officer. The House substitute also provides that related records provided to the Board for the purposes of decertification of an identifiable law-enforcement or jail officer are not to be disclosed by the Board or the DCJS pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

- 6. Budget Amendment Necessary:** Yes, Item 391.
- 7. Fiscal Impact Estimates:** Preliminary (see Item 8 below).
- 8. Fiscal Implications:** DCJS estimates that it will need one regulatory coordinator to develop, manage, and maintain the regulations outlined in the proposed bill and handle any additional regulatory workload at an annual salary cost of \$116,000 (general fund), including benefits. Additionally, DCJS estimates that it will need one program manager to manage and oversee the new decertification review by the APA at an annual salary of \$116,000 (general fund), including benefits.

DCJS believes it must contract a non-DCJS employee to conduct first-level appeal hearings of an officer's decertification. The agency anticipates the number of decertifications will likely increase and estimates an annual cost of up to \$30,000 in general fund support to contract with hearings officers.
- 9. Specific Agency or Political Subdivisions Affected:** Department of Criminal Justice Services, state and local law enforcement agencies.
- 10. Technical Amendment Necessary:** No.
- 11. Other Comments:** None.