



House of Representatives

General Assembly

File No. 508

January Session, 2005

Substitute House Bill No. 5387

House of Representatives, April 25, 2005

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE INDEMNIFICATION OF STATE MARSHALS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-141d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) The state shall save harmless and indemnify any state officer or
4 employee, as defined in section 4-141, any state marshal and any
5 member of the Public Defender Services Commission from financial
6 loss and expense arising out of any claim, demand, suit or judgment
7 by reason of his alleged negligence or alleged deprivation of any
8 person's civil rights or other act or omission resulting in damage or
9 injury, if the officer, employee, state marshal or member is found to
10 have been acting in the discharge of his duties or within the scope of
11 his employment and such act or omission is found not to have been
12 wanton, reckless or malicious.

13 (b) The state, through the Attorney General, shall provide for the
14 defense of any such state officer, employee, state marshal or member
15 in any civil action or proceeding in any state or federal court arising
16 out of any alleged act, omission or deprivation which occurred or is
17 alleged to have occurred while the officer, employee, state marshal or
18 member was acting in the discharge of his duties or in the scope of his
19 employment, except that the state shall not be required to provide for
20 such a defense whenever the Attorney General, based on his
21 investigation of the facts and circumstances of the case, determines
22 that it would be inappropriate to do so and he so notifies the officer,
23 employee, state marshal or member in writing.

24 (c) Legal fees and costs incurred as a result of the retention by any
25 such officer, employee, state marshal or member of an attorney to
26 defend his interests in any such civil action or proceeding shall be
27 borne by the state only in those cases where (1) the Attorney General
28 has stated in writing to the officer, employee, state marshal or member,
29 pursuant to subsection (b) of this section, that the state will not provide
30 an attorney to defend the interests of the officer, employee, state
31 marshal or member, and (2) the officer, employee, state marshal or
32 member is thereafter found to have acted in the discharge of his duties
33 or in the scope of his employment, and not to have acted wantonly,
34 recklessly or maliciously. Such legal fees and costs incurred by [a state]
35 such officer, [or] employee or state marshal shall be paid to [the] such
36 officer, [or] employee or state marshal only after the final disposition
37 of the suit, claim or demand and only in such amounts as shall be
38 determined by the Attorney General to be reasonable. In determining
39 whether such amounts are reasonable, the Attorney General may
40 consider whether it was appropriate for a group of officers, employees,
41 state marshals or members to be represented by the same counsel.

42 (d) The provisions of this section shall not be applicable to any
43 [state] such officer, [or] employee or state marshal to the extent he has
44 a right to indemnification under any other section of the general
45 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	5-141d

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Comptroller - Adjudicated Claims Account	GF - Cost	Potential	Potential
Attorney General	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes the state legally liable for the actions of any state marshal (there are presently about 230 of them) while in the discharge of the state marshal’s duties. It is anticipated that the Office of the Attorney General could handle any potential caseload increase under the bill without requiring additional resources. However, to the extent that any single action results in a settlement payment or payments, the state could incur a significant cost under the bill. Note that the State Marshal Commission receives greater than 100 complaints annually regarding the conduct of state marshals. It is unknown how many of these complaints could result in civil actions, or the potential magnitude involved.

OLR Bill Analysis

sHB 5387

AN ACT CONCERNING THE INDEMNIFICATION OF STATE MARSHALS**SUMMARY:**

This bill requires the attorney general to defend, and the state to indemnify, a state marshal in the same way as currently provided for state officers, employees, and members of the Public Defender Services Commission. It does so by requiring:

1. the state to indemnify the state marshal for financial loss or expense from a claim or judgment based on negligence, deprivation of civil rights, or other acts or omissions causing damage or injury when the state marshal (a) was acting in the discharge of his duties or scope of employment and (b) did not act wantonly, recklessly, or maliciously;
2. the attorney general to defend a state marshal unless it is inappropriate; and
3. the state to pay the state marshal's legal fees and costs if the attorney general did not defend him and his conduct is later determined to be covered by the indemnification statute.

EFFECTIVE DATE: October 1, 2005

BACKGROUND***State Marshals***

By law, state marshals are independent contractors compensated on a fee for service basis. They provide legal execution and service of process. The State Marshal Commission fills vacancies in state marshal positions, sets professional standards for them, reviews and audits their records and accounts, and can remove a state marshal for cause after notice and a hearing.

State Marshals' Liability Insurance and Bond

The law requires state marshals to carry personal liability insurance for damages caused by their tortuous conduct. This applies to negligent acts, errors, or omissions that the state marshal becomes legally obligated for damages for false arrest, erroneous service of civil papers, false imprisonment, malicious prosecution, libel, slander, defamation, violation of property rights, or assault and battery committed while making or attempting an arrest or against an arrested person. The conduct must occur during the performance of the state marshal's official duties (CGS § 6-30a).

The insurance must cover at least \$100,000 for damage to one person or his property and \$300,000 for damage to more than one person or more than one person's property.

The law also requires the state to pay the premium on a bond state marshals must give the State Marshal Commission. The bond must be \$10,000 for the faithful performance of his duties and for damages based on his unfaithfulness or neglect and \$100,000 if he collects tax warrants for the state or municipalities (CGS § 6-39).

Related Bill

sSB 1189 includes a provision that would allow state officers, employees, and members of the Public Defender Services Commission to sue the state in Superior Court to enforce the indemnification provisions. The Judiciary Committee reported it out on April 5.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 30 Nay 4