

2013 HOUSE JUDICIARY

HB 1138

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1138
Job 17436
DATE January 21, 2013

Conference Committee

Camen Hickle

Explanation or reason for introduction of bill/resolution:
Relating to peace officer licenses

Minutes:

Testimony 1

Chairman Kim Koppelman: Opened the hearing on HB 1138.

Rep. Diane Larson: Testified in favor of HB 1138 and was asked by the Post Board, which is the board that handles the standards for Peace Officers to sponsor the bill.

Les Witkowski, Chief Deputy, Burleigh County Sheriff's Dept: See attached testimony. He is chairman of the Peace Officers Standards and Training Board. HB bill 1138 adds an additional requirement which is a criminal background investigation for Peace Officers.

Rep. Vicky Steiner: If someone has not been found guilty how would your board handle that it's just a suspicion and then they are denied their badge and they said they didn't do it? How does your board handle if you thought the guy did do this action but was not convicted on it. It's a grey area isn't it?

Les Witkowski: The board gets notified generally through the agency itself or sometimes we read about it in the paper. The individual that has committed a crime but has not been charged can still be dealt with administratively. Most agencies will handle it that way with a termination. What we're asking for in this bill is to allow us to take adverse action against that license when a person is not charged or convicted or plead guilty. We are looking at a code of conduct to cover those types of situations when the individual is not charged.

Rep. Vicky Steiner: So he has admitted guilt?

Les Witkowski: Each circumstance is different. There are times when a victim comes forward and for whatever reason does not want to pursue this. Normally an agency will conduct an internal affairs investigation. Or they will ask BCI to conduct an investigation to determine if there was inappropriate conduct.

Mark Sailer, Chief Agent with the Bureau of Criminal Investigation and Executive Secretary of Peace Officers Standards and Training Board: I am responsible for the day to day administration of the functions of the Standards and Training Board. There are currently 2052 licensed Peace Officers in ND. Of those 34 are limited license. Of the 2052 they are in 126 law enforcement agencies, 65 of those are police, dept. 53 Sheriffs department, and 8 of those are state law enforcement agencies. He went over some of the information Chief Deputy Witkowski had covered in his testimony.

Rep. Randy Boehning: In Section 2 Line 16, does this apply to just the limited license or to all of law enforcement?

Mark Sailer: For all law enforcement. But if you go under number 6 in section one it's subject to section 12-63-12.

Rep. Randy Boehning: At the end of that line is says or any offense, what is any?

Mark Sailer: Any offense determined by the Board to have a direct bearing.

Rep. Randy Boehning: A bad check, a speeding ticket, a parking ticket that's pretty open ended?

Mark Sailer: It does seem open ended. To my knowledge the board has never taken action against anything like that. Those are offenses that could happen to anybody maybe not even intentional. Also the adverse license action does provide for a hearing before the district court. So the board would bring the action but the board would not necessarily be the deciding factor. The court would be.

Rep. Randy Boehning: With this here you can be writing administrative rules, are you going to use any or are you going to list out examples of provisions. This is open ended and I have an issue with that.

Mark Sailer: This is not the ability to serve as a peace office isn't a change in the law this is one that is already there. It has to be an offense that has a direct

bearing on their ability to serve. Something that has shaken the public confidence in them, that would really affect their ability to serve.

Rep. Randy Boehning: Is this going to be interpreted just by the Post Board or will it be interpreted by the police chief in Fargo, the police chief in Williston, the police chief in some little town? Or it is going to be the post board or up to the local entity?

Mark Sailer: The board generally does not search out investigations involving the officers, so for the most part the agencies themselves are reporting to the post board. If they terminate an employee for conduct they felt was inappropriate, they fill out a form and ask the Post Board for possible action.

Rep. Randy Boehning: The termination is up to the local authority whether it is the Chief of Police, the County Sheriff, or the Attorney General. Each one can have a different definition of any that they want to terminate someone. It is going to be pretty board and determined differently with all jurisdictions, isn't it?

Mark Sailer: As to what they are reporting to the board, yes. The board could vote.

Rep. Randy Boehning: One of the things I'm looking at is the Police Chief in Fargo has an officer that is an habitual speeder but on the other end of the state we could have an officer who has been picked up multiple times and that Police Chief doesn't think that is fire able offense. I think it leaves in wide open and don't like the word any.

Chairman Kim Koppelman: If I'm reading this correctly you are narrowing the definition of what offenses are applicable here, aren't you? It looks like current law says an offense determined by the board that to have a direct bearing upon the person's ability to serve. You're further defining that to be a felony offense and an offense involving domestic violence, restraining order, child abuse or neglect, firearms etc. am I reading this correctly?

Mark Sailer: Those specific violations were ones that we thought were so serious that really needed to be spelled out. Those are more definite offenses.

Chairman Kim Koppelman: So the term Rep. Boehning is referring to is any which follows that.

Mark Sailer: Yes.

Rep. Diane Larson: I was wondering about clarification with Rep. Steiner's question. It seems to me her question has to deal with an officer that accused of something and the officer said they did not do it, just the accusation itself is that going to be enough for adverse license? Then do they decide just based on the accusation?

Mark Sailer: You have an accusation that the person would not admit to doing that conduct there is going to be an investigation prior to that ever coming before the board. So it would a preponderance of evidence that was found in that case before the board would really decide if they needed to take any action against that person license.

Rep. Ben Hanson: I want to clarify so that if there is accusations and evidence is being compiled would there be any ability to abuse this if there is interpersonal politics in a department or what would prevent someone from turning an accusation into an investigation? Is there certain evidence threshold?

Mark Sailer: The Agency itself would be the one to investigate unless they asked another agency to investigate for them.

Chairman Kim Koppelman: If there is activity by a law enforcement official his or hers superiors in that department feels is inappropriate or lack of performance whatever it might be, that individual can be terminated short of license revocation?

Mark Sailer: That's correct.

Chairman Kim Koppelman: So a license revocation really rises to a higher level which would remove their ability to serve anywhere in that capacity.

Mark Sailer: That's correct.

Ken Sorenson, Assistant Attorney General: I have been assigned to provide legal counsel to the Peace Officers Standards and Training Board. The initial language in the statute is convicted or plead guilty so where we are talking about criminal offense. But I certainly don't have a problem changing that language from any offense to a criminal offense. Part of what we are trying to do is getting the message to law enforcement and to agency administrators so they can look at the statute and say okay this is going to be a problem for us. The Peace Officers Standards Training Board and the Attorney General have received

complaints over the last couple of years, since the last session, about officers that seem to be escaping the consequences of the criminal prosecution process and because of that end up with their license. One of the down sides of that process is if there is no plea of guilty and there is no conviction, and the officer may be terminated from their employment but they are still a licensed officer. We do see from time to time they end up being hired in another jurisdiction because that jurisdiction won't have to bear the cost of training that officer. Presently when an offense resulting in a conviction either by pleading guilty or finding of guilt, when that is reported to the board they still get fairly substantial due process. ND is kinder to officers than a number of jurisdictions where once there is a plea of guilty that's it. Our process is it gets reported to the board, right now the language is if the person pleads guilty or is found guilty of an offense that has a direct bearing, so the board has to make a determination does this offense have a bearing on their ability to serve as a Peace Officer. Once the board makes that determination whether or not to move forward. What it does is an administrative complaint is issued and that is served the same as a complaint under the rules of civil procedure. The officer is given time to respond, sometimes they contest it and sometimes they don't. If they are going to challenge the proceedings even after there is a conviction we still run into that from time to time. At that point we engage the Office of Administrative Hearings. They will assign an Administrative Law Judge; they will take it over at that point. What's happened over the years is we have never had to go to a full blown adversary administrative hearing because at some point or another, either a compromise has been reached as to disposition or the officer just decided to put themselves at the mercy of the board. But we do have a fairly extensive due process component to our proceedings so that the board just doesn't say this is an offense that has a direct bearing on your ability to serve as a Peace Officer you're done.

Rep. Karen Karls: How often does this board meet, a certain monthly schedule or as needed?

Ken Sorenson: The Board has a quarterly meeting scheduled; they meet 4 times per year. They will have special meetings that are called by the chairman. So normally the questions of adverse action are brought up at the regularly scheduled board meetings. Right now we have a couple of officers who are doing extensive prison time for double AA felony gross sexual imposition. Both of those cases involved officers, one of those a Chief of Police, and the victims were 14 year old girls. We had another officer we did adverse action on he had sex with an inmate. This seems to be a common one. Most of the officers in the state are a professional we can trust. The ones that come before the board, besides the obvious sex crimes, are the ones that the board has to make that

determination. We had one where the officer falsified an accident report. We had another one where domestic violence. Another one where an officer was fairly intoxicated and created a high speed pursuit, fleeing. These have generally ended up with pleas of guilty sometimes in addition to the plea the agency may have taken action. Some of those may not result in termination. We had another officer that went out and shot a neighbor's dog. The ones the board has taken actions on the public confidence issue. We thought it time to specify these in statue. The more serious ones we are putting right there in statue so that everybody knows.

Chairman Kim Koppelman: The items we have been talking about are still preceded by the word may. The implication is the board still has discretion even if an officer has committed those kinds of offenses. Was it your intention to make that a prerequisite? If those offenses are adjudicated as being guilty of those offense that they would lose their license and that the board has further leeway or discretion with regard the other kinds of offenses in response to Rep. Boehning's question?

Ken Sorenson: Yes, that was discussed whether we wanted to keep that discretionary language and ultimately concluded discretionary. Although the practice has been when we run into those situations they will act because we didn't want to tie the board too much. A criminal offense determined by the board is probably discretionary because it does get subjective at times. Another situation we are dealing with is under the present rules of criminal procedure they have a process of what is called deferred prosecution. In those case an officer may have been charged with an offense and at some point maybe to protect a license or to expedite the matter instead of plea of guilty being entered the officer may elect to go through this deferred prosecution process. So there is no plea of guilty, there is no finding of guilt; they may end up on some form of probation. But in the absence of a plea or finding of guilt the board doesn't have under the present statutory authority to move. This may be some of those situations where the board can move separately.

Rep. Vicky Steiner: You talked about that confidence issue with the public, in Stark County incidents where our Sherriff used his County vehicle and went to the House of Manna and he was videotaped taking items that had been donated for the House of Manna. The House of Manna is for people who need assistance and they lay items by the door. There was a camera there working and he went at night and used the County vehicle to pick up items and take them to his farm. That made the paper and Stark County officials asked for his resignation and there was an investigation. In the court of public opinion it appeared that he was

misusing public property. Did you consider a misuse of public property as something you would say you no longer have the public confidence because of this incident. BCI said they could not prove one way or another that he was stealing because that is a place to donate. But that is their parking lot and it was their property as it was placed there for them. He took it without their knowledge. If you are talking about confidence of the public there was some damage done there.

Ken Sorenson: The board is developing a code of professional conduct. The board has had the statutory authority to include ethics as part of its administrative rules for a substantial time.

Chairman Kim Koppelman: Can you think of a felony offense involving domestic violence, or violation of a restraining order, or offense involving child abuse or neglect that would not trigger at least a probationary action if not suspension or revocation of a license?

Ken Sorenson: Right now a first time offense violation of a misdemeanor if in fact there was a conviction where a person plead guilty or was found guilty, very likely the board would take action on that.

Chairman Kim Koppelman: How about the felony offenses? There would be some action wouldn't there automatically?

Ken Sorenson: Yes, we are trying to get to that point. That's why we want to put it right in statue. We are running into problem with agencies and officers. It is pretty much given that a felony conviction is a bar to carrying a sidearm for 5 years or 10 years. And for domestic violence it's lifetime. We are also finding these officers that are coming in may have these in their background and will show up in a background check and they would be denied access to our criminal justice information system and being denied access to the federal system.

Chairman Kim Koppelman: Speaking of that criminal background investigation is added to the bill. Has it been practice to do those in the past?

Ken Sorenson: It's always been a requirement for a criminal history for the license itself. It was an open question while the board typically tried to get criminal history background investigation, a lot of agencies would do it. We wanted to put it in statue. Part of what we are doing is letting the agencies know this is the expectations.

Chairman Kim Koppelman: No other testimony, hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1138
January 23, 2013
Job 17630

Conference Committee

Kristin Hetzel

Explanation or reason for introduction of bill/resolution:

Peace officer licenses.

Minutes:

Chairman Koppelman: Opens. Perhaps the language should read - The Board must suspend, revoke, or impose probationary conditions of a felony.

Rep Larson: There was one that suggested that was on the second page, line 16. Cross of any and add a criminal.

Chairman Koppelman: Instead of a criminal it should probably say another criminal offense since we are talking about criminal offenses prior to that. What are the wishes of the Committee?

Chairman Koppelman: Lines 11, 12? Change that also?

Rep Larson: Will work on the amendments and revisit HB 1138 when amendment draft is complete.

Chairman Koppelman: Close until amendments are ready.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1138
January 30, 2012
Job 17976

Conference Committee

Kristi Hetzler

Explanation or reason for introduction of bill/resolution:

Peace officer licenses.

Minutes:

Chairman Koppelman: Opens. Amendments pg 2, line 11 it changes the may to a shall
And the effect of that is that the Board must deny a license in case of felony.

Rep Larson: Moves to Do Pass.

Rep Boehning: Second.

Chairman Koppelman: Discusses the uncertainty within the committee.

Rep Larson: Moves to withdraw the Motion.

Rep Boehning: Also withdraws.

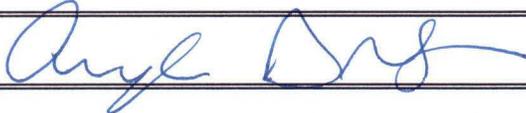
Chairman Koppelman: Rep Larson will revisit with Mr. Sorenson and see what he was
thinking, make sure we are all on the same page.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1138
February 5, 2013
Job 18321

Conference Committee



Explanation or reason for introduction of bill/resolution:

Peace officer licenses.

Minutes:

Testimony 1

Chairman Koppelman opened.

Rep Larson explained the amendment.

Rep Larson moved for the amendment.

Rep Maragos seconded.

Voice vote carried.

Rep Larson moved for Do Pass as Amended.

Rep Boehring seconded.

Roll Call Vote:

Yes: 14

No: 0

Absent: 0

Carried by Rep Boehning.

February 5, 2013

VR
2/5/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1138

Page 2, line 11, after "1." insert "The board shall deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions if the individual has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of a felony offense.

2."

Page 2, line 14, remove the overstrike over "an"

Page 2, line 14, remove "a felony offense, an"

Page 2, line 16, after "firearms" insert "under title 12.1 or title 62.1"

Page 2, line 16, replace "any" with "another criminal"

Page 2, line 27, overstrike "2." and insert immediately thereafter "3."

Page 3, line 4, overstrike "3." and insert immediately thereafter "4."

Re-number accordingly

Date: 2-5-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1138

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Larson Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote - carried

Date: 2-5-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1138

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Larson Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Boehning

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1138: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1138 was placed on the Sixth order on the calendar.

Page 2, line 11, after "1." insert "The board shall deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions if the individual has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of a felony offense.

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Page 2, line 27, overstrike "2." and insert immediately thereafter "3."

Page 3, line 4, overstrike "3." and insert immediately thereafter "4."

Renumber accordingly

2013 SENATE JUDICIARY

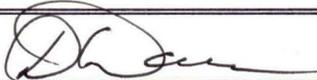
HB 1138

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1138
3/11/2013
Job #19691

Conference Committee

Committee Clerk Signature 

Minutes:

Attached testimony

Relating to peace officer licenses

Senator David Hogue - Chairman

Representative Diane Larson - District 30 - Introduces the bill - See written testimony. (1)

Major Les Witkowski - Chief Deputy, Burleigh County Sheriff's Dept., Chairman, ND Peace Officer Standards and Training Board. - See written testimony (2). Senator Hogue asks Mr. Witkowski why the Board wouldn't want the discretion to either deny or not deny an officer who has had a felony conviction. Mr. Witkowski replies that the original bill had the word may in it but the House committee changed it to shall. He says the Board agrees with that change because it still allows the Board to impose non-renewal, suspension or probation. It gives them some latitude as to what sanctions should be imposed. Senator Hogue also asked him about the change in time from 90 days to 30 days and it was explained that time frame is in line with other administrative processes.

Ken Sorenson - ND Attorney General's Office, Litigation Counsel and General Counsel for the Peace Officers Standards and Training Board - Mr. Sorenson explains there are 2011 sworn officers, 63 with limited license and 13 officers with part time license. He says these numbers are up 35 from the time this bill was presented in the House. He answers Senator Hogue's question by saying that the Board has not denied a license because of criminal back-ground; they have done a fair number of revocations and suspensions. He explains some of the recent actions taken against officers and how they monitor them. He said some will require additional training. Senator Hogue asks him if the Board is comfortable with having individual departments do the back-ground checks. Mr. Sorenson says that it has worked over all.

Opposition - none
Neutral - none

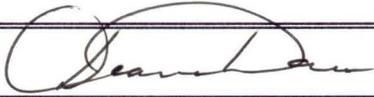
Close the hearing on 1138.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1138
4/1/2013
Job #20730

Conference Committee

Committee Clerk Signature 

Minutes:

vote

Senator David Hogue - Chairman

Committee work

Senator Hogue says he would like to change the word shall back to may on line 11. He believes law enforcement should have the discretion regarding letting someone serve if they have had a felony. Senator Lyson said he disagrees with the word shall also.

Senator Armstrong moves to amend shall to may on page two, line eleven
Senator Lyson seconded

Verbal vote - all yes
Motion carries

Discussion
Senator Armstrong believes it is good to let the locals decide.

Senator Sitte moves a do pass as amended
Senator Armstrong seconded

Vote - 7 yes, 0 no
Motion passes

Senator Lyson will carry

April 1, 2013



Handwritten signature and date: 4-1-13

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1138

Page 2, line 11, remove "The board shall deny a license, refuse to renew a license, suspend a license, revoke a"

Page 2, remove lines 12 through 14

Page 2, line 15, remove "2."

Page 2, line 18, after "of" insert "a felony offense."

Page 3, line 1, remove the overstrike over "2."

Page 3, line 1, remove "3."

Page 3, line 9, remove the overstrike over "3."

Page 3, line 9, remove "4."

Re-number accordingly

Date: 4-1-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1138**

Senate JUDICIARY Committee

Check here for Conference Committee page 2, line 11

Legislative Council Amendment Number move shall to may

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Armstrong Seconded By S Lyson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal all yes

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-1-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1138**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By J. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent _____

Floor Assignment S. Lyson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1138, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1138 was placed on the Sixth order on the calendar.

Page 2, line 11, remove "The board shall deny a license, refuse to renew a license, suspend a license, revoke a"

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Page 3, line 1, remove "3."

Page 3, line 9, remove the overstrike over "3."

Page 3, line 9, remove "4."

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1138

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1138
JOB #21284
Date: April 18, 2013

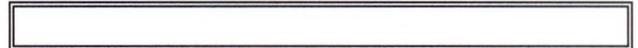
Conference Committee



Explanation or reason for introduction of bill/resolution:

(Conference Committee)
Relating to Peace Officer license.

Minutes:



Representative K. Koppelman: Opens Conference Committee for HB 1138.

Senator Lyson: The Senate amendment page 2, line 11 to 14 and changing the numbers.

Representative K. Koppelman: Why did you make that change in the Senate?

3:28 Representative Delmore: It looks like they put in specific offenses making it more relevant.

Representative K. Koppelman: What I saw in the original bill language that has been deleted, what the board shall do and what the board may do. This gives the board discretion over everything. The intent of the House was the board should have some discretion as outlined in item 2. Also what the board shouldn't do. Read over section 2.

Representative Delmore: Line 18 of the marked up copy it says may deny and now merited includes a felony offense.

Representative K. Koppelman: If it was a felony offense they have to do that.

7:00 Senator Grabinger: The felony offense in green 2001, page 2, line 18 where felony offense was put it back in. If we have felony in there do we need paragraph 1 line 11 to 14?

Representative K. Koppelman: I would point out on line 12 the board shall deny, refuse, renew a license, and revoke a license or impose probationary conditions if the individual has been convicted or plead guilty before a court on a felony offense.

9:56 Senator Grabinger: I agree. Referred to line 16.

Representative K. Koppelman: If you are talking about a felony offense, that's serious.

10:48 Senator Lyson: Language was put in when we started licensing officers, people can be rehabilitated.

This gives them a shot so they aren't considered a criminal forever.

11:53 Representative Boehning: When you have a concealed carry permit, can you carry if you have a felony record?

Senator Armstrong: If you're going to be a licensed police officer if you have a prior felony on your record there are questions always asked. You won't be a licensed police officer if you aren't allowed to have guns.

13:35 Senator Lyson: Gave a scenario. The federal government will not take a felon off the records for any reason.

Representative Boehning: It does partially answer my questions.

Senator Lyson: I am not disagreeing. Why do we have the law of deferred imposition sentence?

Representative Boehning: In other states he's not a felon anymore.

15:44 Senator Armstrong: That is why we moved it from 1 to 2. I would disagree with that answer. Depends on how long after the deferred imposition is in place and what the actual sentencing was.

Representative Delmore: We had a bill we researched if it is expunged in North Dakota that does not mean it will be expunged out there somewhere. There needs to be some credence given to allowing the people who are going to do the licensing what you're saying that flexibility to take a look at this.

17:04 Representative K. Koppelman: We are the elected people to make public policy in North Dakota by our constituents.

19:30 Senator Lyson: I don't disagree but can see myself sitting there and can't give him a job but then we end up in court.

Representative K. Koppelman: The language of 2001, lines 1 to 14 on page 2, that's the language in the House bill that the Senate took out. Ours says "may" Senates says "shall".

21:22 Senator Grabinger: Most of 1 is covered in 2. Giving the board the ability to make the decision.

Senator Grabinger: I move to recede from the Senate amendment. Seconded by Representative Delmore.

A Recede Roll Call vote: Yes = 6, No = 0, Absent = 0. House Carrier: Representative K. Koppelman and **Senate Carrier:** Senator Armstrong.

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. HB 1138 as (re) engrossed

Date: April 18, 2013

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) 1224 - 1225

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Sen. Grabinger Seconded by: Rep. Delmore

Representatives				Yes	No		Senators				Yes	No
Rep. Koppelman	/			/			Sen. Armstrong	/			/	
Rep. Boehning	/			/			Sen. Lyson	/			/	
Rep. Delmore	/			/			Sen. Grabinger	/			/	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Koppelman Senate Carrier Sen. Armstrong

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1138, as engrossed: Your conference committee (Sens. Armstrong, Lyson, Grabinger and Reps. K. Koppelman, Boehning, Delmore) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1224-1225 and place HB 1138 on the Seventh order.

Engrossed HB 1138 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1138

1

TESTIMONY ON HOUSE BILL NO. 1138
HOUSE JUDICIARY COMMITTEE
January 21, 2013

Major Les Witkowski
Chief Deputy, Burleigh County Sheriff's Department
Chairman, North Dakota Peace Officer Standards and Training Board

This testimony is presented in support of House Bill No. 1138. House Bill No. 1138 amends N.D.C.C. Section 12-63-09 relating to limited licenses, it amends N.D.C.C. Section 12-63-12 relating to grounds for the denial of the issuance of a license, denial of renewal of license, suspension of a license, and revocation of a license, and it also repeals N.D.C.C. Section 12-63-08, which is essentially a grand-father clause for the transition in North Dakota from peace officer certification to peace officer licensing in 1989, and is no longer necessary.

1. OVERVIEW OF THE BOARD

The Legislature established the North Dakota Peace Officer Standards and Training Board in 1981 as part of the North Dakota Attorney General's Law Enforcement Training and Statistics Division. The Board's membership consisted of seven members, including the director of the law enforcement training academy and six members appointed by the Attorney General, including a city government representative, a county government representative, and four peace officers. The Attorney General appointed the chairman of the Peace Officer Standards and Training Board.

The Board is charged with the administration and enforcement of N.D.C.C. Chapter 12-63 relating to peace officer standards, training, and licensing, including establishing criteria for training, certification of curriculum, instructors, and schools, and establishing minimum standards for sidearm training and certification.

When the Board was established, peace officers were not licensed, but instead, the Training and Statistics Division issued certificates to officers who met Division's training and sidearm requirements. A newly hired peace officer had up to one year to complete the division's training requirements.

In 1987, the Legislature changed the law from a certification system to a licensing system that became effective in 1989. The licensing system has remained substantially the same since 1989, but in 2005 the Legislature authorized the Board to issue part-time peace officer licenses and in 2007, the Legislature authorized the Board to issue peace officer licenses to tribal law enforcement.

In 2003, the Board's membership was increased from seven members to nine members. The increase included two more peace officers on the Board. The Attorney General still appoints the members, except for the Director of the Law Enforcement

Training Academy, who is automatically a member, and the Attorney General appoints the chairman of the Board. The members serve two-year terms, and with the exception of the Director of the Law Enforcement Training Academy and the city and county representatives, may not serve more than three consecutive terms.

The Attorney General is required to provide the support staff for the Board. The support staff includes administrative and legal support, with one employee serving as the Executive Secretary and ex officio non-voting member of the Board.

2. LIMITED LICENSES

When the licensing system was established, the Board was authorized to issue what is called a limited license to newly hired peace officers who had completed certain minimal requirements, including education, medical, psychological, and sidearm requirements. The limited license allowed the officer to perform peace officer duties until the officer completed the basic training course at the Law Enforcement Training Academy, and passed the licensing examination.

The proposed changes to the limited license statute, N.D.C.C. Section 12-63-08 are in part housekeeping, and in part substantive.

Section 12-63-08 includes a number of requirements in one paragraph and as such presents some clarity issues. The housekeeping change is to separate Section 12-63-08 into subsections with each subsection separately addressing a part of the limited license requirements.

The amendment specifically requires a criminal history record background investigation, which is not a present requirement, although it is a requirement for the eventual peace officer license.

The current statutory language requires the applicant for a limited license to attend the first available basic training program recognized by the board. That was not too difficult for the Board to administer, or for agencies hiring new officers, when there were only two basic law enforcement training programs taught at the Law Enforcement Training Academy each year, and those were the only basic law enforcement training programs presented in North Dakota.

At the present time, because of increased demand for law enforcement officers in the state, the Highway Patrol is conducting three basic law enforcement training programs at its Law Enforcement Training Academy in Bismarck each year, and there are also Board-authorized basic law enforcement training programs conducted under a community college approach through the Lake Region State College in Devils Lake. The Lake Region State College basic law enforcement training programs are also taught in Fargo, Grand Forks, and Minot. Typically, the individuals who attend the program at the Highway Patrol's academy are already hired by law enforcement

agencies and already have their limited license, and typically, the individuals who attend the Lake Region State College basic law enforcement training programs in one of the several locations have not been hired and pay tuition to attend the program. Even so, there are agencies who request their new officers attend one of the Lake Region programs. The change in the limited license provision to require the individual attend the first available training program in accordance with the rules of the Board will give the Board, and hiring criminal justice agencies, some latitude in determining the appropriate basic law enforcement course for the individual.

The proposed amendment also directly connects the limited license to N.D.C.C. Section 12-63-12, which is the statute that authorizes the Board to deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions. Current statutory language relating to adverse license action involving a limited license only provides the limited license is effective until it is suspended or revoked, but it does not address denial, renewal, or probationary conditions, and it does not provide any statutory criteria for the adverse license action. The amendment will authorize the Board to pursue, when necessary, the same types of adverse license action for the limited license that Section 12-63-12 provides for a regularly issued peace officer license.

3. ADVERSE LICENSE ACTION

N.D.C.C. Section 12-63-12 authorizes the Board to deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions if the peace officer has been convicted, or pled guilty to or nolo contendere before a court in any state, or before any court, of an offense the Board determines to have a direct bearing on the individual's ability to serve as a peace officer, or following the conviction, has not been rehabilitated. Other grounds for adverse action include the unjustified use of deadly force, making a false material statement under oath to the Board, making a false material statement to the Board while obtaining or renewing a license, or a violation of N.D.C.C. Chapter 12-63.

Almost all states have an express requirement that the commission of a felony offense is cause for denial of a license, or if the state is a certification state, denial of certification, and if an individual has a license, loss of the license or certification. The fact of a felony offense may be used to impeach an officer's testimony under the Rules of Evidence, it is a bar to the officer's ability to access the Federal Bureau of Investigation's criminal history data bases, it is a bar to the officer's ability to access North Dakota's Criminal Justice Information System ("CJIS"), and it is a bar to the officer's ability to carry and use a firearm. North Dakota law does not provide the commission of a felony offense is by itself ground to deny, or take action on, a peace officer license. Therefore, the Board asks that commission of a felony be an express statutory ground for adverse license action.

The Board is also asking for express statutory language for domestic violence and domestic violence restraining orders, child abuse and neglect, and firearms offenses. A domestic violence offense carries a life-long firearms prohibition under federal law, even when the offense itself may be a misdemeanor. Abuse or neglect of a child is a felony under N.D.C.C. Section 14-09-22, and so it may not be entirely necessary to include it if the felony language is already there, but it is requested to make it clear to hiring law enforcement agencies and individuals who may be seeking employment as a law enforcement officer, that child abuse and neglect is a ground for adverse license action. The Board is also asking for statutory language about firearms violations. A violation of a federal firearms law will generally be a felony violation, but that is not necessarily the case for violation of a North Dakota firearms statute, e.g., the transfer of a firearm to somebody who may not possess a firearm, or providing false information in the purchase of a handgun, is a misdemeanor.

The Board is also asking for the authority to take adverse license action for a violation of the rules of the Board. A limitation of Section 12-63-12 is that the Board may not take action against a peace officer's license if the officer has committed a crime unless the officer has pled guilty to, or has been found guilty of, the crime. It may be that the victim, or the family of the victim, does not want the case to move forward because of social pressure, or the officer and the officer's employing agency and the prosecutor may have reached an understanding that if the officer resigns, charges will not be filed, or if filed, reduced or dismissed, with the result that the officer has committed an act that warrant's adverse action, but because there is no plea of guilty or conviction, the Board does not have grounds to bring adverse license action. N.D.C.C. Section 12-63-04(2) requires the Board to develop rules for the professional conduct of officers, including ethical standards of peace officer practice. The Board is presently working on amending its administrative rules to include additional requirements for professional conduct and ethics. The amendment will give the Board's administrative rules more than guideline effect – they will be enforceable.

The Board is also asking to change the 90 day appeal period in Subsection 3 of Section 12-63-12 to 30 days, which is in line with the appeal provisions of the N.D.C.C. Chapter 28-32, the Administrative Agencies Practices Act.

4. REPEAL OF SECTION 12-63-08.

The Board also requests repeal of N.D.C.C. Section 12-63-08. This section was included for the Board to issue peace officer licenses to individuals who were certified as peace officers before July 1, 1989, and to waive parts of the training requirements for officers outside of North Dakota who had experience and training prior to January 1, 1989. It is not necessary anymore.

Felony Offense is Basis for Adverse License or Certification Action

Alabama	
Arizona	Also includes offenses involving dishonesty, unlawful sexual conduct, or physical violence
Arkansas	
California	
Colorado	Also includes various misdemeanor offenses
Connecticut	
Delaware	Also includes misdemeanor moral turpitude, including theft, fraud, and violation of public trust
Florida	
Georgia	
Idaho	
Illinois	
Indiana	Also includes two or more misdemeanors showing violence or propensity to violate the law
Iowa	
Kansas	Also includes crimes of domestic violence or dishonesty
Kentucky	
Maine	
Maryland	
Michigan	
Minnesota	
Missouri	Any criminal offense, whether or not a criminal charge is filed
Montana	Also includes offenses involving dishonesty, unlawful sexual conduct, and physical violence
Nebraska	Also for crimes of domestic violence, physical violence, or sexual abuse against children
Nevada	Also for offenses of moral turpitude or controlled substance violations
New Mexico	Also for offenses of moral turpitude
Ohio	Also may include misdemeanors
Oklahoma	Also includes crimes of domestic violence and crimes involving moral turpitude
Oregon	Also includes multiple misdemeanor offenses
South Dakota	Also includes misdemeanor crimes of moral turpitude
Texas	Also do 10 year suspensions for misdemeanors
Utah	Also includes crimes of dishonesty, unlawful sexual conduct, physical violence, or DUI
Vermont	
Virginia	Also for failing to submit to, or failing a drug screening test
West Virginia	Also includes any crime involving dishonesty, unlawful sexual conduct, physical violence, or DUI
Wyoming	Also includes misdemeanor offenses that may result in imprisonment in a state prison

2-5-13

Rep Larson

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PROPOSED AMENDMENTS TO HOUSE BILL 1138

Page 2, after line 10, insert, "1. The board shall deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions if the individual has been convicted or plead guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of a felony offense."

Page 2, line 11, overstrike "1." and insert immediately thereafter "2."

Page 2, line 14, remove the overstrike over "an"

Page 2, line 14, remove "a felony offense, an"

Page 2, line 16, after "firearms" insert "under title 12.1 or title 62.1"

Page 2, line 16, replace "any" with "another criminal"

Page 2, line 27, overstrike "2." and insert immediately thereafter "3."

Page 3, line 4, overstrike "3." and insert immediately thereafter "4."

Re-number accordingly

My name is Diane Larson, Representative from District 30, and I bring HB 1138 to you at the request of the POST (Peace Officer Standards and Training) Board. This Board is comprised of people in law enforcement who monitor their own profession and their standards are in the Century Code.

The bill involves license requirements and we have someone here from the POST board to go over those changes with you. The bill also has a repealed section at the end that repeals the grandfather clause. When this was first put into law, the standards to get a license didn't apply to those who were already in law enforcement. Those who have gotten a license since the law was written have all had these standards to get their license.

TESTIMONY ON ENGROSSED HOUSE BILL NO. 1138
SENATE JUDICIARY COMMITTEE
March 11, 2013

Major Les Witkowski
Chief Deputy, Burleigh County Sheriff's Department
Chairman, North Dakota Peace Officer Standards and Training Board

This testimony is presented in support of Engrossed House Bill No. 1138. Engrossed House Bill No. 1138 amends N.D.C.C. Section 12-63-09 relating to limited licenses, it amends N.D.C.C. Section 12-63-12 relating to grounds for the denial of the issuance of a license, denial of renewal of license, suspension of a license, revocation of a license, and probationary conditions for a license, and it also repeals N.D.C.C. Section 12-63-08, which is essentially a grand-father clause for the transition in North Dakota from peace officer certification to peace officer licensing in 1989, and is no longer necessary.

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The Board is charged with the administration and enforcement of N.D.C.C. Chapter 12-63 relating to peace officer standards, training, and licensing, including establishing criteria for training, certification of curriculum, instructors, and schools, and establishing minimum standards for sidearm training and certification.

When the Board was established, peace officers were not licensed, but instead, the Training and Statistics Division issued certificates to officers who met the Division's training and sidearm requirements. A newly hired peace officer had up to one year to complete the Division's training requirements.

In 1987, the Legislature changed the law from a certification system to a licensing system that became effective in 1989. The licensing system has remained substantially the same since 1989, but in 2005 the Legislature authorized the Board to issue part-time peace officer licenses and in 2007, the Legislature authorized the Board to issue peace officer licenses to tribal law enforcement.

In 2003, the Board's membership was increased from seven members to nine members. The increase included two more peace officers on the Board. The Attorney General still appoints the members, except for the Director of the Law Enforcement

2

Training Academy, who is automatically a member, and the Attorney General appoints the chairman of the Board. The members serve two-year terms, and with the exception of the Director of the Law Enforcement Training Academy and the city and county representatives, may not serve more than three consecutive terms.

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The amendment specifically requires a criminal history record background investigation, which is not a present requirement, although it is a requirement for the eventual peace officer license.

The current statutory language requires the applicant for a limited license to attend the first available basic training program recognized by the board. That was not too difficult for the Board to administer, or for agencies hiring new officers, when there were only two basic law enforcement training programs taught at the Law Enforcement Training Academy each year, and those were the only basic law enforcement training programs presented in North Dakota.

At the present time, because of increased demand for law enforcement officers in the state, the Highway Patrol is conducting three basic law enforcement training programs at its Law Enforcement Training Academy in Bismarck each year, and there are also Board-authorized basic law enforcement training programs conducted under a community college approach through the Lake Region State College in Devils Lake. The Lake Region State College basic law enforcement training programs are also taught in Fargo, Grand Forks, and Minot. Typically, the individuals who attend the program at the Highway Patrol's academy are already hired by law enforcement

agencies and already have their limited license, and typically, the individuals who attend the Lake Region State College basic law enforcement training programs in one of the several locations have not been hired and pay tuition to attend the program. Even so, there are agencies who request their new officers attend one of the Lake Region programs. The change in the limited license provision to require the individual attend the first available training program in accordance with the rules of the Board will give the Board, and hiring criminal justice agencies, some latitude in determining the appropriate basic law enforcement course for the individual.

The proposed amendment also directly connects the limited license to N.D.C.C. Section 12-63-12, which is the statute that authorizes the Board to deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions. Current statutory language relating to adverse license action involving a limited license only provides the limited license is effective until it is suspended or revoked, but it does not address denial, renewal, or probationary conditions, and it does not provide any statutory criteria for the adverse license action. The amendment will authorize the Board to pursue, when necessary, the same types of adverse license action for the limited license that Section 12-63-12 provides for a regularly issued peace officer license.

3. ADVERSE LICENSE ACTION

N.D.C.C. Section 12-63-12 authorizes the Board to deny a license, refuse to renew a license, suspend a license, revoke a license, or impose probationary conditions if the peace officer has been convicted, or pled guilty to or nolo contendere before a court in any state, or before any court, of an offense the Board determines to have a direct bearing on the individual’s ability to serve as a peace officer, or following the conviction, has not been rehabilitated. Other grounds for adverse action include the unjustified use of deadly force, making a false material statement under oath to the Board, making a false material statement to the Board while obtaining or renewing a license, or a violation of N.D.C.C. Chapter 12-63.

Many states have an express requirement that the commission of a felony offense is cause for action against the license, including denial of a license, or if the state is a certification state, action or denial of certification, and if an individual has a license, loss of the license or certification. The fact is a felony offense may be used to impeach an officer’s testimony under the Rules of Evidence, it is a bar to the officer’s ability to access the Federal Bureau of Investigation’s criminal history data bases, it is a bar to the officer’s ability to access North Dakota’s Criminal Justice Information System (“CJIS”), and it is a bar to the officer’s ability to carry and use a firearm. North Dakota law does not provide for the commission of a felony offense by itself is grounds to deny, or take action on, a peace officer license. Therefore, the Board had asked that the commission of a felony become an express statutory ground for adverse license action under Section 12-63-12. The House Judiciary Committee amended HB 1138 to make

it mandatory that the Board take adverse action on a license if the officer plead guilty to, or was found guilty of a felony offense, but left it discretionary with the Board as to the type of adverse action taken on the license. The Board agreed with the House Judiciary Committee's amendment.

The Board is also asking for express statutory language for domestic violence and domestic violence restraining orders, child abuse and neglect, and firearms offenses. A domestic violence offense carries a life-long firearms prohibition under federal law, even when the offense itself may be a misdemeanor. Abuse or neglect of a child is a felony under N.D.C.C. Section 14-09-22, and so it may not be entirely necessary to include it if the felony language is already there, but it is requested to make it clear to hiring law enforcement agencies and individuals who may be seeking employment as a law enforcement officer, that child abuse and neglect is a ground for adverse license action. The Board is also asking for statutory language about firearms violations. A violation of a federal firearms law will generally be a felony violation, but that is not necessarily the case for violation of a North Dakota firearms statute, e.g., the transfer of a firearm to somebody who may not possess a firearm, or providing false information in the purchase of a handgun, is a misdemeanor. The reference to Title 12.1, the main part of North Dakota's criminal code, and Title 62.1, which includes the weapons provisions of the code, is to provide some clarification as to the types of offenses that will brought before the Board, and distinguishes these offenses involving firearms from hunting violations that may have involved the use of a firearm, but may only be an infraction.

The Board is also asking for the authority to take adverse license action for a violation of the rules of the Board. A limitation of Section 12-63-12 is that the Board may not take action against a peace officer's license if the officer has committed a crime unless the officer has pled guilty to, or has been found guilty of, the crime. It may be that the victim, or the family of the victim, does not want the case to move forward because of social pressure, or the officer and the officer's employing agency and the prosecutor may have reached an understanding that if the officer resigns, charges will not be filed, or if filed, reduced or dismissed, with the result that the officer has committed an act that warrant's adverse action, but because there is no plea of guilty or conviction, the Board does not have grounds to bring adverse license action. N.D.C.C. Section 12-63-04(2) allows the Board to develop rules for the professional conduct of officers, including ethical standards of peace officer practice. The Board is presently working on amending its administrative rules to include additional requirements for professional conduct and ethics. The amendment will give the Board's administrative rules more than guideline effect – they will be enforceable.

Adverse license actions by the Board are subject to the Administrative Agencies Practice Act, N.D.C.C. ch. 28-32. The Board is asking to change the current 90 day appeal period in Subsection 3 of Section 12-63-12 to 30 days, which is in line with the

appeal provisions of N.D.C.C. Chapter 28-32, the Administrative Agencies Practices Act.

4. REPEAL OF SECTION 12-63-08.

The Board also requests repeal of N.D.C.C. Section 12-63-08. This section was included for the Board to issue peace officer licenses to individuals who were certified as peace officers before July 1, 1989, and to waive parts of the training requirements for officers outside of North Dakota who had experience and training prior to January 1, 1989. It is not necessary anymore.

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