

2015 HOUSE JUDICIARY

HB 1467

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1467
1/27/2015
22653

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the authority of federal agents.

Minutes:

Testimony #1

Chairman K.Koppelman: Opened the hearing with testimony in support.

Rep. Monson: Introduced the bill. (See testimony #1) (1:04-6:31) A few parts of the bill that need cleanup would be language would be 29.06-05.2. That would add the US Customs and Border Protection to the definition of federal agent. 29-06-15 updates the outdated terminology of US Custom Service or immigration or Nationalization Service. Their new name is actually US Custom and Border Protection so that would be just a cleanup.

Rep. D. Larson: I have been a member of the gang taskforce and gave good information on what they were seeing coming across the border so they are a critical part of that team.

Chairman K.Koppelman: 12-62 being repealed. Is there another section of law that now outlines training for peace officer, police officer or is there nothing in code that deals with that. We will ask our intern to check on this language.

Rep. Monson: I do not. She did not tell me anything that they would put in to replace it.

Chairman K. Koppelman: We will ask our intern to replace that.

Rep. P. Anderson: What kind of training do they have as border patrol? (mike not on)

Rep. Monson: I did not ask them. I do know they carry weapons and they are a federal employee I would hope they would have through training.

Rep. Brabandt: How many miles of border do you have in your district?

Rep. Monson: About 90 miles of border.

Rep. L. Klemin: Do the Canadian's still have the dike road?

Rep. Monson: It is a dike or maybe a road. There have been instances where people have gone up there and blown the dike and there is need to patrol that.

Rep. Lois Delmore: Is it your intent to add Air Marshall's or anything else or are you comfortable as it stands?

Rep. Monson: I just thought of that this morning. If you can think of other ones that could be on the list please let me know.

Rep. G. Paur: There was a regional office in Grand Forks that covers a large area. You don't think it is odd that this one person wants to play cop and it doesn't come from that regional headquarters asking for the ability to enforce ND law?

Rep. Monson: When you are a federal employee you are walking a pretty fine line. He did not realize that this was an obsolete part of the law.

Chairman K. Koppelman: I assume a federal agent under federal law could make an arrest under law.

Rep. Monson: Federal laws are restrictive.

Chairman K. Koppelman: As I look at the building I see that it is just the definition of a federal agent. Are Air Marshall's authorized to act in any other realm since that would be air? A federal agent under federal law has the authority to make an arrest for a violation of federal law in any state. Am I correct about that?

Rep. Monson: TSA? Do they have a right to arrest someone or do they rely on local law enforcement? There are federal statutes that allow certain things no matter where they are in the nation they are covered by those laws that protect them. When they are asked by a local county sheriff to respond to an accident or something that is when they start feeling maybe we don't have quite the protection we need under ND law.

Chairman K. Koppelman: As I look at the law it appears to be just a definition of what federal agents are for the purpose of this law. Are air marshal's authorized to act in any realm outside of an airplane?

Rep. D. Larson: Did you check with any border patrol headquarters to find out if they even want to be able to enforce state laws?

Rep. Monson: I only spoke with one person. I think it only makes sense. I do not know if they would have a problem being included. At the same time they are no supposed to be influencing state law.

Rep. K. Wallman: Was this a federal language change that we are trying to correct?

Rep. Monson: I understand somewhere in federal law they have changed their name?

Chairman K .Koppelman: We need to check on peace officer or other federal peace officers that may want to be included.

Rep. Monson: Check with Legislative Counsel.

Opposition: None

Neutral: None

Hearing closed.

Rep. D. Larson: Volunteered to do follow up on this.

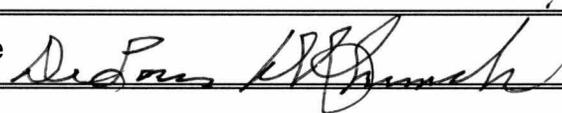
2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1467
2/4/2015
22749

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

Chairman K. Koppelman: reopened the meeting on HB 1467.

Rep. D. Larson: Discussed the change of name on the bottom of page 1; he said that is absolutely accurate. Nationally that name has changed. In terms of the repealed language on the training he said that has been repealed because all of those federal agents that are listed in this have much more training than the local police.

Chairman K. Koppelman: What we heard testimony on was 12-62 has been repealed itself so even the references are obsolete. I visited with the sponsor of the bill and asked about it. I said I didn't think it was really necessary to start talking about TSA. The one that did stand out is maybe like the Border Patrol that might be worthy of mentioning would be US Marshall's.

Rep. D. Larson: I had that written on my bill as I was showing it to Mr. Sorenson and he said no they aren't specifically in that area where they could use that extra helps. All of those federal agents all do work in the state cooperatively with law enforcement. They wouldn't be typically enforcing ND laws but they would have authority to step in as need be so it wouldn't really need to be spelled out in here, but the one specific on the Customs and Border protection seems to make sense with what is going on. He would be willing to come and give further information.

Chairman K. Koppelman: What are the committee's wishes?

Rep. Lois Delmore: I would like to talk to some of the border patrol officers too.

Chairman K. Koppelman: This doesn't require any of those folks to do anything. It is just permissive.

Rep. D. Larson: Kent Sorenson said their office has been talking to Border Patrol about this.

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1467
2/9/2015
23533

- Subcommittee
 Conference Committee

Ammonda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to authority of federal agents.

Minutes:

Chairman K. Koppelman: Opened discussion on HB 1467. Representative Monson introduced relating to federal officials.

Representative Delmore: I do have some concerns, I went a long ways with the Border Patrol and finally got someone who is in charge with the government relations stuff, but the fact that he is not for it or against it, and I don't know if it was a standard line, I don't know how I feel about that.

Chairman K. Koppelman: I think Monson testified that even the fellow that wanted him to introduce the bill privately was a little concerned because they have an official policy that they cannot interfere with state legislation. So I suspect that is why they told you that.

Representative Larsen: Ken Sorensen assistant attorney general gave me his phone number and said we could call him with clarification, he thought that this was a good idea and that what you said is correct that they can't really speak as a separate agency. If we were going to add all the other federal agencies there would be like 99 of them he said but there are some that make sense because they are called in to back up law enforcement and such.

Chairman K. Koppelman: So is it your sense that we should try to figure out what some of those others are or should we do pass.

Representative Larsen: No, just a do pass the way it is and so it would not be the right thing to do according to Ken Sorensen to add everything into it because they already have the federal jurisdiction and so they usually are not going to be enforcing North Dakota law whereas the border patrol is often asked to enforce North Dakota law. I move a do pass.

Representative Klemin: Seconded the motion.

Representative Paur: I don't like authorizing having federal officers who are basically unfamiliar with our laws, enforcing our laws. Last session we were looking at legislation which would have forbidden our state officials from assisting the federal officers and now we are turning around.

Chairman K. Koppelman: I think the bill from last session, which didn't pass, was designed to keep our folks from assisting the federal authorities in trying to enforce federal law that would infringe upon constitutional rights. That was the concern about that one.

Representative Klemin: All this bill does is saying that someone who is arrested can't challenge the authority doing the arresting. If the US customs and border protection agency says to its employees "you are not to do this", they won't do it anyway. It is really only an authorization on our part that they can do it without a warrant if their agencies will allow them to do it. If their agency isn't then it won't do anything.

Chairman K. Koppelman: I also see in this section of law, that the DEA is mention, and I know from visits with law enforcement (some BCI agents were working with local law enforcement in two states and also DEA). I think I understand Representative Monson's intent and what you stated is correct.

A Roll Call Vote Was Taken: Yes 10, No 3, Absent 0

Motion carries

Representative Johnson will carry the bill.

Date: 2-9-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB1467**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep Larson Seconded By Rep L. Klemin

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman		✓
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar		✓			
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur		✓			

Total (Yes) 10 No 3

Absent 3

Floor Assignment Rep. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1467: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1467 was placed on the
Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1467

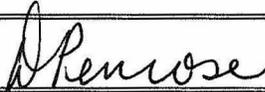
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1467
3/24/2015
25331

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1

Ch. Hogue: We will open the hearing on HB1467.

Rep. David Monson: Sponsor, support (see attached #1).

Sen. Grabinger: I have a friend that was a highway patrolman up in Crosby. He told me stories about how he worked with the border patrolmen up there. I certainly get the gist of what you're talking about here and trying to do. My concern is if they don't the laws of this state and they are going to make arrests; does that concern you. It may create a liability issue or something because they are making arrests that they shouldn't be.

Rep. David Monson: I guess when I was writing my testimony, I thought of that a bit, but in talking with the border agent, he's been there for years. He had been a citizen in the state for years. I'm sure that the federal government, when they send out border patrol agents, they make sure that they know what is going on locally. It's a possible concern I suppose. As he explained to me, he said sometimes in Cavalier county, our sheriff's department isn't even on duty 24/7. He works with the sheriff's department all the time. He's driving through town at 2:00 am. I think the last deputy sheriff who is off duty at 2:00 am and they are on call but the only law enforcement guy driving around is border patrol.

Sen. Grabinger: My concern is that if the agent decides to make a DUI arrest and something goes awry and there is a liability issue. Who covers him while he was working as a police officer in ND? Does the federal government because he's a border patrol agent. Do we have responsibility?

Ch. Hogue: I don't know that I can answer that. I don't know who would cover that liability. I guess since he works with the county sheriff and the county sheriff actually has done this with him for years and years, I don't know if there would be a liability other than what he's already covered by being a federal agent. He's doing what a deputy sheriff would do.

Sen. Grabinger: I believe there is a process for that; if he's deputized. He can certainly work under that authority.

Rep. David Monson: I don't know.

Sen. Armstrong: In Grand Forks, ND which is qualified as a border town, and border agents in Grand Forks already have authority under the federal statute because it is qualified as a border community. This is essentially just expanding it to the rural areas, because they only designate communities. I believe they only have arrest power if they witness a felony. So the DUI situation would not be accurate and then when they are assisting other law enforcement they would be covered by the state. I had a case with this many years ago but they have general arrest powers in Grand Forks, and then they have general arrest powers on the border; they don't have general arrest powers anywhere between the border and Grand Forks which is 70 miles away. They run into some of these situations because of how the federal government designates border towns. For border patrols, specifically, this is just an expansion of something they already do to the rural areas.

Rep. David Monson: That is actually the situation that my friend spoke to me about. He said that when he is in Grand Forks and make arrests, no problem. But when he is making an arrest in Cavalier County, even though law enforcement there is happy to have him do that.

Sen. Luick: Who designates whether Grand Forks is a qualified border area.

Rep. David Monson: Yes, that is set by the federal government. When he is stationed there that is set up by the federal government. They decide what a border community is.

Ch. Hogue: How can the federal government decide where they can make arrests in the state of ND?

Rep. David Monson: I guess it's just like FBI and DEA, anywhere in the US they are under the jurisdiction. In the case of a border patrol agent they are

usually stationed along a border. I'm not saying that he couldn't make an arrest even in SD.

Sen. Armstrong: The community accepts the designation and that's how border patrol agent gets deployed to certain areas and things like that. As far as the federal government goes, this is not a very heavy handed matter. As a matter of practicality, when they do these, they immediately call local law enforcement. Roughly 99% of this is assisting other law enforcement agents. If they do make some kind of arrest, they want local law enforcement there to deal with these issues.

Rep. David Monson: The border patrol is not allowed to testify, so he isn't able to be here.

Sen. Luick: How much lineal length do you have along the MN border?

Rep. David Monson: Probably about 40 miles.

Ch. Hogue: Thank you. Further testimony in support.

Dave Beaudoin, Dickinson: In listening to this testimony, I'm wondering what the increase of violence has been or violations in that county has been in the last 20 years, because there is an increase. You will have an increase of violence if there is no enforcement. Enforcement is standard procedure to have in areas where there is little enforcement. The point is that no enforcement incurs more violations because people would just basically do what they want to, especially in domestic violence situations. I think we should look into the increase, if there has been an increase, of violence. I think this would be beneficial to local law enforcement; to keep law and order in a county where there are very few officers.

Sen. Grabinger: I'm not following you on that. You think that the federal officers should be able to help out here in this particular case in law enforcement, but in earlier testimony on another bill, which would probably hinder their ability to do that, you spoke in favor of it.

Dave Beaudoin: In law enforcement, my feelings on that are that the law has to be kept unless you will have violence. There may be a necessity for officers to be there. Border patrol officer, once regulated under conformity to the state of ND, a peace officer from ND should have the right to have assistance, especially in domestic violence and other areas. They have to

have protection out there. It's a risky job and if we can concur with border patrol to help in situations, I think it is a plus, not a negative as long as the jurisdiction of the state officer is present.

Ch. Hogue: Presumably he's going to be like any other agent or employee of the state. He is going to be on our policy, but those types of claims are rare.

Sen. Armstrong: The federal cap is higher than the state cap. As a practical matter, I think they would try to go towards the federal caps. Border patrol agents, as far as federal agents go, these cooperative agreements with local law enforcement make them, in my opinion, a less draconian agency. They deal well with the local community, they are involved with them, they do all of those things and they don't take this responsibility lightly. They work very well with local law enforcement. I move a Do Pass on HB 1467.

Sen. Grabinger: Second the motion. I agree that we should have them working together. My only concern was that they might not know our laws and if we got one that decided that he wanted to be a local cop and he doesn't know our laws; that concerns me. On page 3, 6c, the officers receive training in the laws of the state equivalent to the training provided for police officers under chapter 12-62. If they don't know the laws do we want them policing. I certainly want them to assist our departments and would like to be able to have them work as officers but I want to make sure that they know what they are doing.

Ch. Hogue: I think that language was struck because somebody could make the argument that their training isn't equivalent.

Sen. Armstrong: If you look on page 1, line 14 that is if he believes that a felony offense was committed. The felonies are the big ticket items and they are kind of the same everywhere. You're not going to have your initial DUI enforcement or your bar closing and they don't deal with minor crime issues; this is for when they are patrolling, doing their normal border patrol and all of a sudden they see one guy pounding the other guy into the ground in a fight type of situation. These are things that they happenstance across more so than active patrolling. When they assist local law enforcement they should be fine because local law enforcement is there. I don't think we need additional language, it's fine like it is.

Ch. Hogue: They aren't going to get down into those minor offenses where what Sen. Grabinger is talking about that there is going to be a distinction between ND and federal law.

Sen. Armstrong: As a practical matter, they will stop someone, detain them and then call local law enforcement in. Whether it's a crime or not will be determined on site. In Montana, where it is legal for a passenger in a car to have a beer in the car, if border patrol stopped them, local law enforcement would say it is legal here, get out of here.

Sen. Grabinger: But the testimony that Rep. Monson gave clearly stated that this might be the only law enforcement in that area to do anything. So if there is an incident, I think that's what they want; to be able to respond to everything. That's the way I took his testimony.

Sen. Armstrong: I believe that the border patrol training is significantly better training than the UND campus cop has before he becomes law enforcement. Good cops know what is against the law and what isn't.

5 YES 0 NO 1 ABSENT

DO PASS

CARRIER: Sen. Armstrong

Date: 3/24/15

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1467

Senate

JUDICIARY

Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment

Do Pass Do Not Pass Without Committee Recommendation

As Amended Rerefer to Appropriations

Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson		<u>Absent</u>
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Sen. Armstrong

REPORT OF STANDING COMMITTEE

HB 1467: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1467 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1467

1
HB1467
1-27-15
FJ 1

Chairman Koppelman and members of the committee, for the Record my name is David Monson from District 10.

The changes outlined in House Bill 1467 will update the North Dakota Century Code with correct nomenclature and clarify the authority of Border Patrol Agents when they participate in organized law enforcement task forces with the North Dakota Bureau of Criminal Investigation, assist local law enforcement officers in day-to-day tasks, and during serious incidents or disasters.

Currently in the state of North Dakota, the United States Border Patrol has approximately 100 Agents assigned and patrolling some of the more remote areas of North Dakota. The Border Patrol is regularly called upon to assist state, county, and local law enforcement officials when needed.

While on routine patrol, Border Patrol Agents often encounter law enforcement situations they are required to act upon to preserve the safety and security of the people of North Dakota. The Border Patrol is also currently part of the Grand Forks High Intensity Drug Trafficking Area Task Force with the North Dakota Bureau of Criminal Investigation and will shortly have an agent assigned to the Minot Drug Task Force.

Updating the North Dakota Century Code with House Bill Number 1467 will benefit the people of North Dakota with enhanced safety and security, benefit state, county, and local law enforcement with a force multiplier when needed, and protect Border Patrol Agents by clarifying their authority.

I would like to outline a few parts of the bill, Section 29-06-05.2. adds United States Customs and Border Protection to the definition of "Federal agent". This is needed because the Border Patrol now has agents assigned to state task forces.

29-06-15 updates the outdated terminology of "United States Customs Service or Immigration and Naturalization Service" to the current and correct term of "United States Customs and Border Protection".

29-06-15. eliminates the sentence "The officer has received training in the laws of this state equivalent to the training provided for a police officer under chapter 12-62". This is necessary because chapter 12-62 has been repealed from state law.

Thank you for your consideration today and I urge a DO PASS recommendation on HB1467.

#1-1
3/24/15

Testimony on HB 1467

Rep. David Monson

Mr. Chairman and members of Senate Judiciary Committee, for the record I am Rep. David Monson from District 10 in far northeastern ND.

This bill is before you today because one of my constituents is a Border Patrol officer. In my district which is very rural and runs along the Canadian Border for about 90 miles, the only law enforcement officers on duty sometimes are Border Patrol agents. He brought several things to my attention. First, the present list of Federal law enforcement officers authorized to make arrests in ND is limited to FBI and DEA agents. Therefore, Border Patrol officers are in a gray area when making arrests in ND. In our area, there are many more Border Patrol agents than either FBI or DEA agents. They routinely make arrests and assist the local law enforcement agents in many ways. Secondly, our state code is outdated in the name we have in code for Borderer Patrol agents. The modern name is United States customs and border protection agents. The third problem is the training they receive. It does not exactly conform to the training as described on page three of the bill, so I am suggesting that the easiest fix is to do as the House Judiciary Committee did and just strike lines 6 and 7 of page 3. The training they receive is comparable and extensive, probably going beyond equivalent, but technically, it is not exactly the same.

In Summary, the bill was amended in House Judiciary. I believe they did a good job making it do what we need done, and I hope you can support it and pass the bill. Thanks for your consideration.