

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1259

2007 HOUSE TRANSPORTATION

HB 1259

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1259

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01-19-2007

Recorder Job Number: 1440

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz opened the hearing on HB 1259. All Representatives were present.**

**HB 1259 relates to criminal penalty for driving while under the influence.**

**Rep. Ruby** introduced the bill.

**Rep. Ruby:** This bill is a bill dealing with DUI penalties. Last session I had a few bills that dealt with issues that relating to this. Last session I had a bill that would have required, after a certain number of offenses, that a vehicle be confiscated. The way it was worded, the Attorney General's Office had some problems with being able to take it at different levels of a violation and they said that under the code at this time, you can cease property that is used when committing a felony. I actually had another party talk about doing something about confiscating vehicles again and I told them that the problem the Attorney General's office had with it and suggested that the best way to do this would be to lower our criteria for a repeat offense to become a felony. All the states around us have a lower bar set for a repeat offense to become a felony. For the most part, three in ten years seems to be standard. One in particular, in South Dakota, I couldn't find anything on time limit, so it could be the third one, period. What I am proposing is that we change what we currently have. Currently, a person violating this section is guilty of a class B misdemeanor for the first offense and the second.

Then a Class A misdemeanor for the third offense and both of these are within a five year period and a Class A felony for the fourth and your fifth in a seven year period would be a Class C Felony. Now what changes this is that your first violation is a Class B misdemeanor and your second offense in a five year period Class A misdemeanor, and your third one in ten years is now a Class B felony. It toughens it up. We were told that your first violation is contingent upon your blood alcohol level and can more than likely get by with a reckless driving. Under this, a third one in ten years, could be your fourth one, because the first one may have been plead down. I think that North Dakota needs to look at this to make sure that we are at least as tough on this law as the states around us and what is happening in most of the country. A lot of our deaths are attributed to alcohol and this is a bill that I hope the committee agrees with me on and is something we should do at this time.

**Chairman Weisz:** Was there any particular rationale going from the seven to ten years or you just thought it should be a longer period of time?

**Rep. Ruby:** I thought it should be a longer period of time. I think that once somebody hits their second one that they better be could for a longer period than seven years. I can't believe that five and seven years was the bottom before. I think that having this life for seven to ten years is going to be a deterrent for people to drive while they are intoxicated and will have this penalty attached to them for a longer period of time.

**Rep. Metcalf,** spoke in support of the bill.

**Rep. Metcalf:** I have family members who are alcoholics. When we talk about alcoholics, that means that these people that go out on Saturday night and have five to fifteen drinks, are they alcoholics? You bet they are. Do I want my family members that are alcoholics to get into an accident that may create a death or injury of some other person and pay for that for the rest of their lives? I don't believe that we need that to happen. One of the ways of preventing this

from happening is to make sure that they realize that they have a serious problem. If we have to give them a higher conviction rate, then I think it is our responsibility to provide that.

**Rep. Gruchalla:** I just want to add my few comments to this bill. When I saw it, of course I was eager to sign on it. After I study this a little bit, I do think it's a moving this in the right direction. During my time on the Highway Patrol, I arrested over a thousand drunk drivers and I remember one of those in particular, I had his twenty fourth arrest. He told me that he would never get his license back anyways, so he just kept driving. During that time, he was involved in six accidents along with a fatality. Other countries have much stiffer penalties. Other western countries in comparison, this is still not a real tough law. I think anything that we can do to make this a deterrent is the right way to go.

**Lynn Heinert,** Department of Transportation Office and Traffic Safety, spoke in support of the bill.

**Heinert:** In 2006, forty eight of our one hundred and eleven traffic fatalities were alcohol related. In 2005 fifty-six of the one hundred twenty three traffic fatalities were alcohol related. We support this bill strictly from the safety stand point.

**Rep. Delmore:** When it is alcohol related, is it only the driver that is considered? If somebody else has been drinking in the car, is that alcohol related as well?

**Heinert:** We consider the driver of the vehicle only.

**Tom Halmer,** spoke in support of the bill.

**Tom:** This is dealing with a different subject but there is couple of points here. It deals with alcohol abuse in vehicles. Couple of points that it makes is that if the primary objective is to remove a public menace from the roadways, then it's pretty simple to take action or not. There are laws in place right now that never get utilized. The minimum penalties are all we got. I am

in support of this bill. If we can confiscate a vehicle for poaching, how come it never happens to a drunk driver?

**There were no questions from the committee. There was no further support for the bill.**

**There was no opposition to the bill. No action was taken at this time.**

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1259

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01-25-2007

Recorder Job Number: 1959

Committee Clerk Signature

*Lisa M Thomas*

Minutes:

**Chairman Weisz allowed committee discussion on HB 1259. Rep. Kelsch was absent.**

**HB 1259 relates to a restricted permit to operate an automobile.**

**Chairman Weisz:** What are the committee's wishes?

**Rep. Owens moved a DO PASS. Rep. Gruchalla seconded.**

**Chairman Weisz:** This is definitely cranking it up, but it isn't until the third in ten years.

I had some agency have a question on why we were going from seven years to ten years.

**Rep. Owens:** If they get two up front and then they go eight years without a DUI, that doesn't mean they have been good, it just means they haven't gotten caught.

**Rep. Ruby:** Possibly, by the time it was their third one, they maybe had a plea down to reckless driving on one, so basically they have had three or four chances. B and A misdemeanor, those remain in five years, so your second one, on the sixth year, it's still a B misdemeanor.

**Rep. Thorpe:** Did we get any testimony on what the impact would be on the panel system?

**Chairman Weisz:** We didn't.

**Rep. Thorpe:** Mandatory sentencing just about doubled last year, this could kick it up quite a bit.

**Rep. Ruby:** Under felonies, there are certain penalties, I don't know how many of those are mandatory, but there is discretion within the felony guidelines.

**There was no further discussion.**

**Roll Call Vote:** 12 yes. 0 no. 1 absent.

**Carrier:** Rep. Price



**FISCAL NOTE**  
 Requested by Legislative Council  
 02/22/2007

**REVISION**

Bill/Resolution No.: HB 1259

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>				\$138,213		\$449,996
<b>Expenditures</b>			\$852,689	\$138,213	\$2,878,902	\$449,996
<b>Appropriations</b>			\$852,689	\$138,213	\$2,878,902	\$449,996

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Bill changes the penalty for multiple DUI's. Changes are as follows: 2nd offense in 5 year period - from class B to class A misdemeanor;  
 3rd and 4th offense in 10 year period - from class A misdemeanor to class C felony

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Using information obtained from the ND DOT, the DOCR estimates that approximately 814 individuals will receive their 3rd and/or 4th DUI in 10 years during the 2007-09 biennium and that 742 individuals will receive their 3rd and/or 4th DUI in 10 years during the 2009-11 biennium.

Of those amounts the DOCR estimates that 80% will be sentenced to the DOCR for three years with all but 90 days suspended. The DOCR anticipates that the 90 days will be served in a county jail. The remaining 20% of the individuals would be plea bargained and would receive a sentence of 120 days in county jail.

After this bill has been in effect for one year, the DOCR expects to experience a 25% revocation rate for those individuals that have been under supervision for more than nine months. Of those revoked, it is estimated that 50% would go to prison for one year and upon release would remain on supervision until their sentence expires. The remaining revocations are expected to serve time in county jail; 25% for 120 days, and 25% for 180 days. Again upon release from county jail they would remain on supervision for the balance of their sentence.

It is estimated that the provisions of this bill will increase the state prison population by an average of 12.2 for the 07-09 biennium, and by an average of 42.3 for the 09-11 biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenues are supervision fees collected from those individuals placed under supervision of the DOCR. Fees are assessed at \$40 per month. Based on current collection rates, it is estimated that of those on supervision 60% will actually make payment to the DOCR.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

The DOCR estimates that for every 70 individuals sentenced under the provisions of this bill, a new FTE (probation officer) will be required. The estimated annual cost of a FTE probation officer is \$74,912. The total estimated FTE's needed for 07-09 is 7 at an estimated cost of \$459,002. The total estimated FTE's needed for 09-11 is 12 at an estimated cost of \$1,476,787.

The DOCR estimates the provisions of this bill will increase the demand for prison beds by an average of 12.2 beds for the 07-09 biennium. Due to capacity issues all 12.2 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 07-09 is \$531,900. For the 09-11 biennium, the demand for prison beds would increase to an average of 42.3 beds. Again due to prison capacity issues all 42.3 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 09-11 is \$1,852,110.

The total costs to the DOCR are estimated as follows:

07-09 \$990,902

09-11 \$3,328,897

Costs to counties are not estimated. However, for those individuals whose probation is revoked, it is estimated that the provisions of this bill will increase county jail bed demand by 7.7 for the 07-09 biennium and by 17.4 for the 09-11 biennium.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

If the provisions of this bill are adopted, the 07-09 appropriation to the DOCR would need to be increased by \$990,902 (\$852,689 general funds; \$138,213 other funds) and 7 FTE. The estimated necessary appropriation to continue this bill into the 09-11 biennium is estimated at \$3,328,897 (\$2,878,902 general funds; \$449,996 other funds) and 12 FTE.

The amounts estimated above are not included in the DOCR's 07-09 executive recommendation.

<b>Name:</b>	Dave Krabbenhoft	<b>Agency:</b>	DOCR
<b>Phone Number:</b>	328-6135	<b>Date Prepared:</b>	02/22/2007

# FISCAL NOTE

Requested by Legislative Council

02/06/2007

Bill/Resolution No.: HB 1259

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$696,210		\$2,459,772	
Appropriations			\$696,210		\$2,459,772	

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Bill changes the penalty for multiple DUI's. Changes are as follows: 2nd offense in 5 year period - from class B to class A misdemeanor;  
3rd offense in 10 year period - from class A misdemeanor to class C felony

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Using information obtained from the ND DOT, the DOCR estimates that 428 individuals will receive their 3rd DUI in 10 years during the 2007-09 biennium and that 474 individuals will receive their 3rd DUI in 10 years during the 2009-11 biennium.

Of those amounts the DOCR estimates that 80% will be sentenced to the DOCR for three years with all but 90 days suspended. The DOCR anticipates that the 90 days will be served in a county jail. The remaining 20% of the individuals would be plea bargained and would receive a sentence of 120 days in county jail.

After this bill has been in effect for one year, the DOCR expects to experience a 25% revocation rate for those individuals that have been under supervision for more than nine months. Of those revoked, it is estimated that 50% would go to prison for one year and upon release would remain on supervision until their sentence expires. The remaining revocations are expected to serve time in county jail; 25% for 120 days, and 25% for 180 days. Again upon release from county jail they would remain on supervision for the balance of their sentence.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The DOCR estimates that for every 70 individuals sentenced under the provisions of this bill, a new FTE (probation officer) will be required. The estimated annual cost of a FTE probation officer is \$74,912. The total estimated FTE's needed for 07-09 is 5 at a estimated cost of \$306,150. The total estimated FTE's needed for 09-11 is 9 at a estimated cost of \$1,093,632.

The DOCR estimates the provisions of this bill will increase the demand for prison beds by an average of 9 beds for the 07-09 biennium. Due to capacity issues all 9 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 07-09 is \$390,060. For the 09-11 biennium, the demand for prison beds would increase to an average of 31 beds. Again due to prison capacity issues all 31 beds would need to be contracted for at an estimated cost of \$60 per day. The estimated contract bed amount for 09-11 is \$1,366,140.

The total costs to the DOCR are estimated as follows:

07-09 \$696,210  
09-11 \$2,459,772

Costs to counties are not estimated. However it is estimated that the provisions of this bill will increase county jail bed demand by 6 for the 07-09 biennium and by 13 for the 09-11 biennium.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

If the provisions of this bill are adopted, the 07-09 appropriation to the DOCR would need to be increased by \$696,210 and 5 FTE. The estimated necessary appropriation to continue this bill into the 09-11 biennium is estimated at \$2,459,772 and 9 FTE.

The amounts estimated above are not included in the DOCR's 07-09 executive recommendation.

<b>Name:</b>	Dave Krabbenhoff	<b>Agency:</b>	DOCR
<b>Phone Number:</b>	328-6135	<b>Date Prepared:</b>	02/20/2007

Date: 1-25-07  
 Roll Call Vote #: ~~259~~ 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1259

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Owens Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Delmore	✓	
Vice Chairman Ruby	✓		Rep. Gruchalla	✓	
Rep. Dosch	✓		Rep. Myxter	✓	
Rep. Kelsch	A		Rep. Schmidt	✓	
Rep. Owens	✓		Rep. Thorpe	✓	
Rep. Price	✓				
Rep. Sukut	✓				
Rep. Vigesaa	✓				

Total Yes 12 No 0

Absent 1

Floor Assignment Price

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

**REPORT OF STANDING COMMITTEE (410)**  
January 26, 2007 2:08 p.m.

**Module No: HR-18-1375**  
**Carrier: Price**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1259: Transportation Committee (Rep. Welsz, Chairman) recommends DO PASS**  
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1259 was placed on the  
Eleventh order on the calendar.

2007 SENATE TRANSPORTATION

HB 1259

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1259

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: February 23, 2007

Recorder Job Number: 3728

Committee Clerk Signature

*Jody Hauge*

Minutes:

**Senator Gary Lee** opened the hearing on HB 1259 relating to the criminal penalty for driving while under the influence. There were 5 committee members present and 1 absent.

**Representative Ruby** introduced and testified in favor of HB 1259. He said HB 1259 seeks to toughen the penalties for repeat DUI offenders. (Written testimony).

**Senator Potter** asked if prison was the best way to get drunk drivers off the road or is there a better way.

**Rep. Ruby** said with the misdemeanor, the class C felony, the maximum penalty is five years in prison and a fine of five hundred dollars. They would not necessarily have to go to prison, it would be at the discretion of the judges. The possibility of becoming a felon should be a deterrent for drinking while driving. He believes that this is important and we should do it. In addition, SD and Montana have similar provisions.

**Senator Bakke** asked if there were penalties that include drug and alcohol evaluation.

**Rep. Ruby** said that as he understands, there are requirements for an evaluation at this time.

**Senator Lee** said that as he understands the bill, the class A misdemeanors would move to the district court. What will be the impact on the district courts?



**Rep. Ruby** said he believed that it may be of a concern and it will increase the cost and the work load but they could off set this by increasing fines on the second level. He would be in favor of increasing the minimum fines. The courts can go higher but the minimum is the bench mark and that is usually where they go.

**Representative Gruchalla** spoke in support of HB 1259. He said he had been in law enforcement and one half of all the fatal accidents are related to alcohol. He said we are not treating DUI offenders seriously enough because the statistics are not getting better. He believes that HB 1259 is a good step to show that we are ready to move on and treat this as a more serious violation similar to other countries. The first time DUI offenders have to go through an evaluation so by the time they have their third offense they have been through the process.

**Senator Bakke** asked if they had any statistics that show how often people are driving drunk and how often we are arresting people for DUI in the state.

**Rep. Gruchalla** said the last statistics from the ...traffic administration is about 80 times per year driving drunk, as far as ND he did not have those figures.

**Senator Bakke** asked if they had educational programs for the youth to prevent drinking and driving.

**Rep. Gruchalla** said that there were many programs out there and they have been in place for a long time.

**Senator Potter** asked if the people that are guilty of a second or third offense, are they driving with a driver's license.

**Rep. Gruchalla** said many of them are driving under suspension.

**Senator Potter** asked if you have 3 offenses in the last 10 years, are you guilty of both the class C felony and the class A misdemeanor.

**Rep. Gruchalla** said that you skip to the third one.

**Senator Bakke** asked that if there is a death involved does the violation move to another level.

**Rep. Gruchalla** said that is correct.

**Representative Metcalf** testified in favor of HB 1259. He appreciates the opportunity to speak before the committee and stressed the need to have striker penalties. He said that it is important to get these people off the road.

**Kelly Rogers**, Safety and Education officer for the State Hwy Patrol testified in a neutral position to supply information and data on drunk driving.

**Senator Fiebiger** asked if we had data from the other states with tougher penalties, and has it had a deterrent effect.

**Mr. Rogers**, said urban areas have a less problem with DUI offenses than rural. Mr. Rogers also answered a previous question on what a class C felony would do. He said a class C felony places those offenders in the probation system.

**Senator Potter** asked if the statistics showed a presents of alcohol or if it was a DUI offense.

**Mr. Rogers** said the majority were DUI offenses.

**Keith Magnusson** testified in favor of the bill.

Opposing testimony

**Bob Harms** testified in opposition to HB 1259. He had three concerns: Have we established a need with factual statistics? He asked whether there will be any practical implications and third, what kind of impact it will have on our correctional system? He was a defense lawyer for 12 years and chaired the governor's Highway Safety Task Force for most of the 1990's. He was surprised that we have a view that our traffic fatality statistics have gone flat (fluctuate 40% to 50% to 40%). He asked the committee to get the actual statistics because his understanding is that we have made progress. The legislature has addressed this issue time

and time again over the last twenty years with the intent to decrease the fatalities. He urged the committee to get the data. He also had a concern about the overcrowded prison system that this could cause.

**Robert Keogh**, President of the ND Municipal Judge's Association testified against HB 1259. The old saying is "if it isn't broke don't fix it". He has not heard what is "broke" about the current law. The Municipal Judge's Association suggests that the minimum penalties be looked at, since they have been the same for 25 years. His written testimony is enclosed.

**Senator Potter** asked if he was suggesting that the minimum penalties be change.

**Mr. Keogh** said that is at your discretion. Those minimums have stayed the same for 25 years.

**Senator Potter** said you are suggesting that we kill the bill but it sounds like your association would be satisfied if we just amended the bill to make the second offence still a class B misdemeanor and skip directly to class C felony for the third one.

**Mr. Keogh** said our objection would be less but the minimum penalties haven't changed. His personal opinion is that he does not think it is the right thing to do the way this law reads. He feels jumping to a felony is a bit severe.

**DeNae Kautzmann**, Mandan Municipal Judge testified in opposition to HB 1259. Her written testimony is enclosed.

**Connie Sprynczynatyk** testified in opposition to HB 1259. She said it is not that we disagree but it is how we do it effectively.

**Leann Bertsch**, Director of the Department of Corrections and Rehabilitation (DOCR) gave a neutral testimony. Her written testimony is enclosed.

**Senator Potter** asked what would be some alternatives.

**Leann Bertsch** said that they have looked at what other states are doing. Montana has a serious DUI problem and they have implemented treatment center program for chronic DUI offenders.

**Senator Lee** closed the hearing on HB 1259.

## 2007 SENATE STANDING COMMITTEE MINUTES

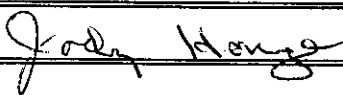
Bill/Resolution No. HB 1259

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4708

Committee Clerk Signature 

Minutes:

**Senator Gary Lee** opened discussion on HB 1259 relating to the criminal penalty for driving while under the influence.

**Senator Potter** moved a Do not pass on HB 1259.

**Senator Nething** seconded the motion.

**Senator Fiebiger** asked if there was anyway to fix this bill.

**Senator Andrist** said if they toughened up the initial offense it might help.

**Senator Potter** said there may be a solution but it needs a hearing so I believe we should kill this bill and bring back the concept in the next session.

The clerk called the roll. 5-1-0.

**Senator Potter** will carry the bill.

Date:  
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1259

Senate Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do not pass

Motion Made By Senator Potter Seconded By Senator Nething

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator JoNell Bakke	✓	
V Ch John Andrist		✓	Senator Tom Fiebiger	✓	
Senator Dave Nething	✓		Senator Tracy Potter	✓	

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Potter

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

**REPORT OF STANDING COMMITTEE (410)**  
March 8, 2007 3:05 p.m.

**Module No: SR-44-4786**  
**Carrier: Potter**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1259: Transportation Committee (Sen. G. Lee, Chairman) recommends DO NOT PASS (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1259 was placed on the Fourteenth order on the calendar.**

2007 TESTIMONY

HB 1259



①

House Bill 1259  
Senate Transportation Committee  
February 23, 2007  
Representative Dan Ruby

Chairman Lee and members of the Senate Transportation Committee, House Bill 1259 seeks to toughen the penalties for repeat DUI offenders.

Currently a repeat offender needs to be convicted of their fifth offense in seven years to reach the threshold to become a felony. This after many plead their first offense to reckless driving. House Bill 1259 keeps the first offense in five years a class B misdemeanor as it is now but changes the second offense in five years from a class B to a class A misdemeanor. Then it lowers the threshold for a felony offense to the third conviction in ten years.

The tragedies and costs to society from repeat DUI offenders are widely known and understood by everyone in this room. The benefits to making the changes in this bill will help deter people from becoming a multiple offender as well as stiffen the penalty for those that do continue to drink and drive. A felony conviction is serious enough to get the attention of almost anyone.

Last session I had a bill that would have required a vehicle of a repeat offender to be confiscated upon a third conviction. I was contacted by the Attorney General's office informing me of several problems with doing so because of the way the bill was written and the level at which it would be imposed. I was told then that they could already confiscate any property used when in the process of committing a felony but we were told this session in the House Transportation Committee, by the Highway Patrol, that there has never been a vehicle confiscated for a felony DUI conviction. This bill would make it easier to take an offender's weapon of choice if the court so desires.

When this bill was heard in the House there was no opposition. Since then I have heard from municipal judges saying that at this time the second violation is handled in municipal court and, if this bill passes, they would then be heard in district court resulting in a loss of revenue for the cities. Also, they say the minimum penalties are not increased by this bill. I assumed that the penalty for a class A misdemeanor was higher than a class B misdemeanor. So I would be in favor of amending this bill to raise those fines to offset the fiscal note attached to this bill.

There was no fiscal note when this bill went through the House but I was informed that one would be needed and provided to this committee. I do not dispute the fiscal note as I'm sure that it was prepared using the most up to date numbers available. However, I believe the effects of House Bill 1259 will be a deterrence for a fair number of violators reducing the cost to district court.

So Mr. Chairman and members of the committee I ask for a favorable do pass recommendation for House Bill 1259 and will stand for any questions.

2

NORTH DAKOTA MUNICIPAL JUDGE'S ASSOCIATION

BOX 1202

DICKINSON, ND 58601

701-483-9146

SENATOR GARY LEE, CHAIRMAN, AND MEMBERS OF THE SENATE  
TRANSPORTATION COMMITTEE:

RE: HB 1259

I am a lawyer and have served as Dickinson's Municipal Judge for 25 years. I write as President of the North Dakota Municipal Judge's Association. The Executive Board of our Association is opposed to this bill. I would ask that this letter be included as testimony before the committee.

Under current law, law trained municipal judges are granted jurisdiction to hear DUI violations of municipal laws, as both the first and second DUI are Class B Misdemeanors. As far as I can determine, the Municipal Courts in North Dakota handled about 3,300 DUI charges in 2006. This would include both 1<sup>st</sup> and 2<sup>nd</sup> DUIs, and also some that are later determined to be a 3<sup>rd</sup> or subsequent offense, and then the case would be sent to the district court.

Please allow me to provide some background along with comments about the proposed bill.

At present, the **first** DUI offense is a Class B Misdemeanor, which carries a maximum penalty of \$1,000 and 30 days in jail, but with the minimum penalty of \$250 and the required evaluation. The new law will **not** change this and **will not** result in more serious penalties upon conviction [many judges, including myself, generally impose a penalty somewhat more severe than the minimum].

At present the **second offense** is also a Class B Misdemeanor, with the minimum penalty being \$500, plus the evaluation, either 5 days jail or 30 days of community service work, and the possible impoundment of the driver's license plates. Many judges now impose a more severe penalty than this minimum, although the jail sentence is usually not significantly more, if at all. But under the proposed bill, this offense would be a Class A Misdemeanor, meaning the maximum penalty is increased to a \$2,000 fine

