

2019 HOUSE JUDICIARY

HB 1132

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1132
1/15/2019
30816

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to an exemption from open records laws for background interviews regarding law enforcement officer job applicants.

Minutes:

1, 2, 3

Chairman K. Koppelman: Opened the hearing on HB 1132.

Rep. Lefor: Introduced the bill. (Attachment #1) Went through testimony. (1:00-5:10)

Chairman K. Koppelman: There is reluctance to be frank because of the knowledge that this information would be available. Are there problems with people filtering out this information after the fact unrelated to the interview?

Rep. Lefor: That will not change even if this bill becomes law. We are trying to alleviate the concern of people who this has already happened to. I am aware of an officer who was hired and had prior domestic abuse while he was wearing a badge and had this been known that individual probably would not have been hired.

Rep. Vetter: Are their background checks public?

Rep. Lefor: Yes it is public record.

Kylan Klauzer, Detective Sgt., Dickinson Police Department: Dickinson extends across multiple regions. Discussed department problems throughout the Police Departments. (Attachment 2) The Attorney General's office said that the waivers were not going to be sufficient by their standard.

Representative Jones: I we make it an exempt record and someone says something this will preclude people from being able to see what was said as a previous record or how does this work?

Kylan Klauzer: Yes that is how it works. The information obtained is thoroughly vetted. We do not take anything by itself. We check out information.

Chairman K. Koppelman: There are different kinds of records in ND. Most are public records, but this is not a closed record. A closed record under law means all or part of an exempt record that a public entity in its discretion has not opened to the public. An exempt record means all or part of a record that is neither required by law to be open to the public nor is confidential but may be opened in the discretion of the public entity.

Donnell Preskey, NDAC: We are speaking on behalf of the sheriff's and deputy's association where I serve as the executive director for NDSDA and they stand in support of this bill.

Opposition: None

Riley Kuntz: Emailed testimony after the hearing. (Attachment 3)

Closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1132
1/15/2019
30841

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to an exemption from open records laws for background interviews regarding law enforcement officer job applicants.

Minutes:

Chairman K. Koppelman: Opened the meeting on HB 1132. This bill is in regard to background interviews regarding law enforcement job applicants. There was no opposition.

Discussion:

Rep. Paur: I think it is a solid bill and probably needed as presented.

Do Pass Motion Made by Rep. Paur: Seconded by Rep. Vetter

Discussion:

Rep. Magrum: My issue with bills like this is we are always reducing transparency in government when we start letting them hid information.

Chairman K. Koppelman: Rep. Lefor and Klauzer has written testimony. Discussed the written testimony.

Representative Simons: The people from Dickinson discussed an issue there that a police officer applied for a job and was denied. Then went back and asked for eleven background checks. I did not realize there was a difference between those two. Background checks are personal information he was not comfortable with that information being available to the public as well. The guy was looking for a law suit and I might vote yes on this one.

Chairman K. Koppelman: The bill says background interviews and that is a good distinction.

Rep. Magrum: You are saying if anyone requested this information they can look at all their banking records? What is detailed in the background checks?

Representative Simons: I did not. I don't know.

Chairman K. Koppelman: The bill says any record revealing the substance of or the individual interviewed in a background interview conducted as part of a consideration of an applicant for a position as a law enforcement officer is an exempt record. Rep. Magrum your question is different than this.

Representative Jones: I thought this was talking about if they interview someone else.

Chairman K. Koppelman: It means that information would not be available for vindictive purposes for someone else to use against them.

Roll Call Vote: 14 Yes 0 No 0 Absent Carrier: Representative Simons:

Closed

Date: 1-15-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1132

House 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 PAUR Seconded By Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	✓
Vice Chairman Karls	✓		Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Simons

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

REPORT OF STANDING COMMITTEE

HB 1132: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1132 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1132

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1132
3/5/2015
#33178 (21:46)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to an exemption from open records laws for background interviews regarding law enforcement officer job applicants.

Minutes:

2 Attachments

Chair Larson opens the hearing on HB 1132. Senator Osland was absent.

Kylan Klauzer, Detective Sgt. With the Dickinson Police Department Criminal Investigative Division, testifies in favor (see attachment #1)

(6) Chair Larson: Please explain how this information differs from criminal background checks, which would be public.

Detective Klauzer: The information that we obtain during the course of our manuals, we'll send out our background investigators to talk to previous neighbors, landlords, divorced husband and wives, etc.

Chair Larson: All of that information goes into your report?

Detective Klauzer: Correct. Initially we had explored even including the interview that we would have with the law enforcement officer themselves, but it was decided that this wording would best suit our needs for the time being.

Vice Chairman Dwyer: It's a problem if this information is public?

Detective Klauzer: The process for Dickenson and for most agencies is that there's a test at the beginning of the hiring process, an oral interview, then a manual background that will take place. At this stage, officers dive into the lives of our applicants to verify the fitness and character for duty. At the end of that process, we will go into a polygraph portion to verify the

information we attained and what that officer provides to us on their own accord. Then they will move onto a psychological and drug test, a medical evaluation, then the start of hire.

Chair Larson: Neighbors are concerned that the applicant will find out what they say about the individual?

Detective Klauzer: Correct. It's a unique position in a sense of what the authority is afforded to those positions. I understand wholeheartedly some of the reluctance we get from these people. We want to provide those citizens some protections knowing that what they say will not necessarily come back around.

Vice Chairman Dwyer: Is this a problem mostly in the Dickinson area, or is this a state-wide problem?

Detective Klauzer: In my discussions with other chiefs and sheriffs across the state, they've agreed that this is a problem from time to time. This is to prevent that from happening in the future and giving us a better chance at running these manual backgrounds.

Vice Chairman Dwyer: At what point is the criminal background check done?

Detective Klauzer: During the manual as well, but there's already protections afforded to the criminal background portion of it. That is separate from this.

Senator Myrdal: It is a unique position with a lot of authority that your officers get after they're hired. Does the interview still stay as an open record?

Detective Klauzer: Yes, the interview that would take place with our investigating officer and our applicant would not fall under this law; it would still be available through an open records request.

Senator Bakke: Has anyone checked with the attorney general on this?

Detective Klauzer: Initially we had worked through some documents and waiver of rights forms. City of Missoula v. Lee was a court case that was appealed out of the ninth circuit. We tried to adopt some forms that were there that would circumvent this process. We were encouraged that this would be the best process to get the results we were looking for.

(13:25) Sandy DePountis, Assistant Attorney General, neutral party

DePountis: I hold the open records and meeting portfolio. Our office has not taken a position on this bill; we neither support or oppose this bill. People have asked for the background interviews, and what they had tried to do is by contract or agreement try to say that they were protected under our open records law. Exceptions to the records law have to be found in law; you can't contract around them. In order to protect them, we said they had to put something into law versus just into a contract. That's how the bill came about.

Senator Bakke: I didn't realize interviews were subject to open record law. Is that true of only government interviews or any interview?

DePountis: It's any public business of a public employee for the hiring process. I also had to do one; this bill wouldn't protect that. If there was interviews for any public employee, and it becomes part of your personal records, it would be subject to the open records law.

Senator Myrdal: This section only deals with law enforcement. Do you foresee that other public entities will follow up and ask for the same thing?

DePountis: We haven't heard anything from other departments, but they have been requested from our law enforcement who does an extensive background interview check.

Senator Myrdal: There are other exemptions; I know we did exemptions last session for volumes. Are there other exceptions to this? I believe in transparent government and open records, but this is very personal information.

DePountis: There are, scattered throughout the Century code and for public employees. We have an exception under 44-04-18.1 that will protect a lot of our personal information such as home address, dependent information, etc. Law enforcement does have a greater protection because of the nature of their job; even their work schedules have protection.

(18:10) Mike Lefor, District 37 Representative, testifies in favor (see attachment #2)

Chair Larson closes the hearing on HB 1132.

Senator Myrdal: Motions for a Do Pass.

Senator Luick: Seconds.

A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.

Chair Larson will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1132**

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 Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Chair Larson

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

REPORT OF STANDING COMMITTEE

HB 1132: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1132 was placed on the
Fourteenth order on the calendar.

2019 TESTIMONY

HB 1132

#1
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1-15-19
mg1

Good afternoon, Chairman Koppelman and members of the House Judiciary committee. For the record, my name is Rep. Mike Lefor and I represent District 37 Dickinson in the North Dakota House.

The purpose of HB 1132 is to exempt records in regard to background interviews for law enforcement applications. Starting with line 8 in the bill it states "Any record revealing the substance of, or the individual interviewed in, a background interview conducted as part of the consideration of an applicant for a position as a law enforcement officer is an exempt record. A background interview is defined as an interview with an individual, other than the applicant for a law enforcement officer position, which relates to the fitness, character, behavior, or other qualifications of the applicant." End quote.

An important function of our law enforcement agencies is to make sure they are hiring qualified personnel as well as individuals who are of a high moral character and have demonstrated they have earned the right to serve the public in this capacity.

We have all heard of individuals who have worked in law enforcement committing crimes themselves and were later found to be less than desirable individuals when further information was obtained after the fact.

There have been instances where individuals who were not hired for the position, making an open records request on other individuals who were either hired or not hired. In fact, one applicant requested the previous ten applicants entire background file information.

HB 1132 will provide necessary protections for witnesses, application references, neighbors, estranged spouses and others when cooperating with law enforcement agencies during background investigations for applicants for law enforcement positions.

Many people spoken to during the background investigation are fearful that what they say will be discovered by the person being investigated. Therefore, individuals are hesitant to speak frankly and will not be forthcoming in this process and the law enforcement agency may hire the individual without knowing some important information.

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Page 2

It is important that we give law enforcement personnel the ability to conduct a thorough background information without the fear of reprisal from someone who should not ever wear a badge.

Thank you for your time and I would be happy to answer any questions.

#2
HB 1132
1-15-19
PJ1

Good Morning Chairman and members of House Judiciary Committee. Thank you Rep Lefor for the overview of HB1132 and all of your help thus far.

For the record, my name is Kylan Klauzer and I am the Detective Sgt. with the Dickinson Police Department Criminal Investigative Division. One of my assignments in this role is overseeing the background investigation processes that involve our law enforcement applicants.

HB1132 is something I've been in discussion with for almost 2 years. It began when former District 36 Senator, Sen. Armstrong, spoke to law enforcement in our area and heard our need to improve our hiring process for law enforcement applicants. He encouraged us there could be something done to help this very thing and offered his resources to start the process. However, because of his campaign to be a US Representative, we were blessed to have Rep Lefor step in on his behalf, take charge, and fill the shoes to run this race with us.

These discussions have simultaneously progressed with law enforcement entities across the state, to include the ND Chiefs of Police, and ND Sheriff's Association. In return, we received unanimous support for this type of bill. Our brothers and sister agree there is a need to help our profession in its efforts to hire the most qualified possible law enforcement officials, for you the people of North Dakota.

Not surprisingly to many of you, our issues in Dickinson came in the midst of the recent oil boom, when we had an increase in hiring law enforcement officials and difficulty finding quality applicants.

A number of different issues obviously arose that we had not seen before, and as Rep Lefor previously indicated, we even had an instance when a law enforcement applicant, who had their conditional offer terminated, because of findings during the manual background

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PJ 2

investigations, request the past 10 background investigations of applicants who were either hired or not hired by our agency.

As the Dickinson Police Department's manual backgrounds extend across the multistate region, we have continued to find it increasingly difficult to garner cooperation from a number of witnesses and subjects with knowledge of our law enforcement applicants. The question almost inevitably posed to our investigating officers is "Are they going to find out what I said?" Indicating a noticeable amount of reluctance because of the authority these positions hold.

Thank you for time and hearing this testimony.

I'd be happy to answer any questions you may have at this time.

Good morning Mr. Chairman, and committee members of the honorable House Judiciary committee. My name is Riley Kuntz and I reside within District 37. Thank you all for the opportunity allowing me to voice my concerns with House Bill 1132. Initially, I was planning a lengthy discourse, however, after viewing the testimony of HB 1234, that tactic has changed. For the reasons stated below, I vigorously request a unanimous 'do not pass'.

- The right of the public to obtain public records of any entity(s) utilizing public money is secured by the ND Constitution. (Section six of Article XI, ND Constitution)
- This same right is also secured in the N.D.C.C. (N.D.C.C. § 44-04-18)
- To my knowledge, no public official or officer has any legitimate expectation of privacy in matters concerning their official duties. Job promotions are official duties. If you can't take the heat, get out of the kitchen.
- This bill, purportedly, seeks to eliminate the abusive 'bad apple' policemen from being promoted; when in actuality said officer should not even be employed by the municipality or state, for engaging in such abusive or retaliatory behavior. There is a different approach to this potential problem. This other approach does not involve chopping away at all of our rights, e.g. a specific, statutory cause of action. I continually refer to a purported or potential for problem because, arguably, no problem exists. Today, in America, when someone's rights are invaded or someone is otherwise aggrieved, someone gets sued. I am unaware of any case at our Supreme Court involving a cop retaliating against an individual for providing an honest answer to a Chief of Police, hence, no problem.
- The Freedom of Information Act (FOIA) was enacted in 1966 and has only nine exemptions.
- ND's Open Records Act (ORA) has 35 exemptions. "A 2002 study, Freedom of Information in the USA, conducted by IRE and BGA, ranked ND's law as the 38th worst in the country, giving it a letter grade of 'D'. "A 2007 study, graded state responsiveness to FOI requests, conducted by BGA and NFOIC, gave ND 44 points

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out of a possible 100, a letter grade 'F' and ranking of 30 out of the 50 states". "A 2008 study, BGA - Alper Integrity Index, conducted by the BGA sponsored by Alper services, ranked ND #34 in the nation with an overall percentage of 48.1%."

([https://ballotpedia.org/North Dakota Open Records Statute](https://ballotpedia.org/North_Dakota_Open_Records_Statute))

- The poor rating of ND's ORA has not improved. The ORA is still subject to arbitrary enforcement and compliance. Just this year, petitioner brought a case to the State Supreme Court for numerous, willful violations of State agency non-compliance with the ORA. In a nutshell, after 13 months and ten requests, despite seeking a record by name, four agencies were unable to find the requested record. The Attorney General agreed and failed to provide an opinion. (Case number 20180135) Logically, even if there is an issue, the government wouldn't even be able to find, let alone produce a record to the detriment of a retaliatory cop.
- "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." "The most important political office is that of the private citizen." (Louis D. Brandeis, former U.S. Supreme Court Justice)

In light of the foregoing information, I renew my request for a unanimous 'do not pass' on HB 1132. Again, thank you all once again for your time and consideration. Please keep this information at the ready for the next attack on our ORA, since there is, historically, a new attack every biennium.

Respectfully,

Riley Kuntz

Good morning Chairman and members of Senate Judiciary Committee. I want to start by thanking you all for your time served and to Rep Lefor for representing us in this process to move HB1132 forward.

For the record, my name is Kylan Klauzer and I am the Detective Sgt. with the Dickinson Police Department Criminal Investigative Division. One of my assignments in this role is overseeing the background investigations that involve our law enforcement applicants.

HB1132 is something that's been in discussion with for nearly 2 years. It began when former District 36 Senator, Sen. Armstrong, spoke to law enforcement in our area and heard a need to improve our hiring process for law enforcement applicants. He encouraged us there could be something done to help this very thing and offered his resources to start the process. However, because of his campaign to be a US Representative, we were blessed to have Rep Lefor step in on his behalf, take charge, and fill the shoes to run this race with us.

The discussions with HB1132 have simultaneously progressed with law enforcement entities across the state, to include the ND Chiefs of Police, and ND Sheriff's Association. In return, we have received united support for this type of bill. Our fellow agencies agree there is a need to help our profession in its efforts to hire the most qualified law enforcement officials for you the people of North Dakota.

Our issues at the Dickinson Police Department originated in the midst of the 2014'ish oil boom, when we had an increase in hiring law enforcement officials and an increased difficulty finding quality applicants.

A number of different issues arose, including one instance when a law enforcement applicant, who had their conditional offer eventually terminated, because of findings during the manual background

investigations, requested the previous 10 background investigations of applicants who were either hired or not hired by our agency. Another example had an applicant request and receive information garnered in the background investigation from his neighbors and estranged spouses, only to in turn reach out to them, in a disturbing manner, which ultimately reflected poorly on us as a law enforcement agency.

As the Dickinson Police Department's manual backgrounds extend across the multistate region, we have continued to find it increasingly difficult to garner cooperation from a number of witnesses and subjects with knowledge of our law enforcement applicants. The question almost inevitably posed to our investigating officers is "Are they going to find out what I said?" Indicating a noticeable amount of reluctance because of the authority these positions hold.

Thank you for time and hearing this testimony.

I'd be happy to answer any questions you may have at this time.

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There have been instances where individuals who were not hired for the position, making an open records request on other individuals who were either hired or not hired. In fact, one applicant requested the previous ten applicants entire background file information.

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