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2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1504

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1504

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2007

Recorder Job Number: 2686

Committee Clerk Signature

Morgan Kimmel

Minutes:

Rep. Charging: Testimony Attached.

Rep. Amerman: On line 10 of the amendment it says "exception of the director of law enforcement training center all members must be appointed by the attorney general. Is there any problem because of sovereignty or anything, can't the attorney general appoint somebody from the tribes?"

Rep. Charging: The bill before you in its original, the legislative body could open a spot on the board. Then the attorney general would probably add his own.

Rep. Amerman: The way the bill reads, it is still in the language that it must be appointed by the Attorney General. I'm just wondering if he has the authority to go appoint somebody from the tribes because of sovereignty. Can he do that or does the tribe have to appoint them?

Rep. Charging: Yes, I would think so. The reason the language is written that way is that it is being removed from the current statute. Maybe they do have representation. My thought back to that is why not deal with the issues in front of you? After visiting with the sheriff I really think that they do have to do something about this.

Rep. Potter: With the Iowa Law, do you have any information on how that has worked for them? I think it says 2003. Do you have any information?

Rep. Charging: I don't have specific information on it. I do have representation here today that will testify before you, and they are the people I mentioned that have dedicated their lives to law enforcement.

Rep. Meier: To your knowledge has there ever been a Native American elected before?

Rep. Charging: No

Rep. Kasper: It appears to me that the crooks of the bill is the last two sentences which grants authority to the peace officers to act in the law enforcement capacity off reservation. Can you share with us what is the problem now that you need that authority and how would the authority be used by a law enforcement representative off reservation.

Rep. Charging: I just want to step back for one moment. One important key thing that I forgot to mention to you is the other component of the board. They license and oversee the academy. What brought my concern first is because of officers from the tribe that have participated and gone through the academy, but upon completion they are not given certificates or licenses. I found that unreasonable.

Rep. Charging: Our statutes are very well written and very clear. Again, it is the limiting language.

Rep. Haas: Originally the bill was requesting simply membership on the board. Tell me did the amendment come about as a result of conversations that you had with police officers in an attempt to solve the real problem. Is it a fact that simply membership on the board will not solve the problem?

Rep. Charging: I was met with some possibility like how do you think this is going to work. We just thought we would have to deal with the problems from within first and foremost. The authority realizes cultural differences. Now we have to decide how we can fit this together. I hear it from my peers, I hear it from other leadership, and from the six sheriff's in my district.

Rep. Haas: Am I right in assuming that the amendment actually came about as the result of your conversation between the tribal people and the non tribal law enforcement people?

Rep. Charging: I think members should still work there.

Rep. Amerman: Are we still trying to put one peace officer on the board for this or are we dealing with something completely different now?

Rep. Charging: We hope you would indulge on the change and I would like to propose the amendment to the bill. Again we just want to make this work, we want to find a way we can do it. We have a lot of problems but what are the solutions? We feel that this may be a solution. It doesn't infringe on anybody's right or jurisdiction.

Rep. Haas: Thank you but Rep. Amerman's question is this is a hog house amendment, correct?

Rep. Charging: Yes

Rep. Haas: So the answer to your question is that it would replace the original bill.

Sen. Warner: I'm just going to speak very briefly to endorse this concept. We live in an enormous geographical area with not a whole lot of resources. We do not use them as efficiently as possible.

Rep. Froehlich: My district is located on the upper part of the Standing Rock Reservation. I've just had a brief moment to look over the amendments here. I'm just going to speak on a personal note. We have one sheriff for the whole county. We don't have the same problems as

Rep. Charging: We only have one county. If there is a kidnapping or anything, we have to call the police. I'm not sure where we are at today and I won't speak to that issue. You have tribal police and then the government police. They will help us and we don't even have to pay them.

Then a bill came across my desk with \$600 for ammunition. I thought to myself how can one

sheriff use that much ammunition. I had to call and say that something was wrong. We looked through the nuts and bolts and with the federal program we have to compensate them.

Rep. Onstad: I want to really speak about the original bill and the amendments for HB 1504, and about putting a peace officer on the board. We need to talk about cross deputization, reasons why we can't do some things, reasons why we can. Putting a peace officer on the board will eliminate that and bring in direct dialogue. We also have the situations about training. We have facilities in the state and for some reasons they are not able to participate in them. I will also give you a situation that if you call 911 in Montreal county, the first question they ask you is if you are an enrolled member? That alone tells you that there is a situation we have going back to the tribes and it's wrong.

Sen. Marcellais: Testimony Attached.

Steve Kelly: I am the attorney for the 3 affiliated tribes. I have been working closely with Rep. Charging on this bill. She brought the original bill to me and told me what she was trying to do and I to read the minutes between the tribal and state relations. They had met three times last year. Something does need to be done with the law enforcement (tribal) and state, county, and city law enforcement. Rep. Charging is trying to find a way to get tribal officers licensed by the Police officer standards and training board. Putting someone on the board doesn't really accomplish that, although the idea was to put someone on the board and talk to the rest of the board members you might be able to get that accomplished. But when you talk to the POST board they do not have the authority to license a tribal officer. So what this bill does is give them that authority. What it does is give the POST board what they didn't have before and that is so they can license them. If you are going to go to that academy, you can get licensed.

Tribal officers don't have to go to the academy, they can go somewhere else. It's only if they want to do it. Tribal officers licensed by this academy can exercise the law enforcement power

even if they are off the reservation. It would be up to them if they wanted to do it or not. I don't know if they would. Right now the law says that Tribal officers can arrest a non member for violation of state law. Some counties may want to utilize the tribal police officers. Rep. Onstad told us that if you call 911 they will ask if you are a tribe member or non Indian. That is because if you are a tribal member they are going to try to send tribal police and if you aren't then they will send someone from the county. It may take awhile if you are non Indian for help to get there, ex. It is 49 miles from Minot to Watford City. If tribes entered these agreements, that wouldn't matter. The only problem would be who could get there the fastest. That is why these agreements are important. Tribal police officers that wish to utilize the state academy could do that. It would help establish relations with other police officers.

Rep. Haas: Are there some agreements in existence now across the state?

Steve Kelly: I believe there is. I know that we have some at 3 affiliated. I believe Belcourt has some.

Rep. Haas: If the county sheriff was cross deputized a tribal law enforcement official, what is the relationships then. Is the tribal one working for two bosses?

Steve Kelly: He is working for two jurisdictions. It allows them to arrest a non Indian for violation of state law.

Rep. Haas: Does working in two jurisdictions create complications for that officer with regard to accountability to whomever?

Steve Kelly: I don't think so. I think the bottom line is that when you live on a reservation you have Indians and non Indians.

Rep. Amerman: Where it says " when an agreement exists between the tribal government and the state, or between the tribal government and the political subdivision. Say the subdivision made an agreement to do this. Say the political subdivision had an agreement but the state

didn't, just because it says or, and it went to court. Would this person have a leg to stand on because of this law.

Steve Kelly: No. The cross deputation would just go to where the person was arrested, in that county.

Rep. Wolf: Who would make these agreements? Would it be the responsibility of the tribe or the state

Steve Kelly: The tribe and the jurisdiction would. It could be the city, it could be the county. Unless a tribe enters into a 6 period contract with the BIA, it provides the law enforcement.

Martin Fox: Testimony Attached

Rep Froseth: Have you had the ability to hire non Indian members and send them to your training schools?

Martin Fox: Yes we do. I believe we have about 37 officers and I believe 3 are non Indian or non tribal.

Marcus D. Wells: Testimony Attached

Rep. Froseth: I am a little confused and I don't know if you can even answer this or not. I guess I have a question on how this applies with the federal regulations that your reservation comes under and the area you are entering. Does this take precedence over the entire situation that this amendment is trying to address?

Rick Littleswallow: I have worked in law enforcement for approximately 27 years. I started out in the late 70's. I was a dispatcher, correctional officer, and worked all the way up to a police officer. I also worked with the Watford city police department in 1981 in the height of the oil boom. I was certified by this academy in Bismarck. I was a certified law enforcement officer in the state of ND. After my employment with Watford City was ended, I went back to the federal government and worked with the state. In the summer of 1987 we seized over \$30 million in

narcotics. I worked in California, Oregon, Minnesota, and Utah. Then I came back to my home state to work. I have worked as an officer on numerous occasions. I have worked as a Sergeant, a captain, a lieutenant, and a deputy director throughout my career. I do not feel that we, as a law enforcement entity, are being recognized. We are being singled out when other states are being recognized as law enforcement, and it hurts me. I am out here protecting the people. I put my life on the line. I will respond to any situation. I feel that the people are not being served as well as you could. If we respond to a car accident and see a non Indian lying there, we are going to do what we possibly can. We will stay on that scene and do everything we can to assist. We are going out, working, we don't care what color you are. We just care to save that person. We don't look at discrimination at that aspect. There are other jurisdictional issues. We have worked with multi jurisdictions. Law enforcement has worked together in the past. We don't care if it's county sheriffs, highway patrolmen, or what. If they need assistance we will do everything we can.

Rep. Haas: Did I hear you say earlier that when you were working in Watford City that you had attended the law enforcement academy?

Rick Littleswallow: Yes sir and I graduated in 1981.

Rep. Haas: In the training academy? Did you receive a certificate?

Rick Littleswallow: Yes at that time I did because I was working for a municipality.

Rep. Amerman: In the situation you are in now, if you would come across an accident off the reservation, could you be liable for lawsuits of all kinds?

Rick Littleswallow: Yes sir we do but we have taken an oath to protect and serve the people.

Rep. Haas: Have you ever been cross deputized?

Rick Littleswallow: Yes I have.

Rep. Haas: Are you now?

Rick Littleswallow: No

Nelson Hart: *I am the tribal captain of police for the three affiliated tribes. I'm a former criminal investigator. I have 20 years of law enforcement experience. I have been all over the US. I support HB 1504 and the amendments the way it is. I have about 12 tribal officers under me and 10 of them have completed the state police academy training. Some were offered the test and some weren't. Right now the three affiliated tribes is policed by the Bureau of Indian Affairs and the tribal police, but have wrote a letter of intent to contract law enforcement. The BIA will investigate their cases on the reservation and it would be 100% tribal law enforcement. That is the trend that is going through the country right now because of federal set backs. We would like to and will continue to, no matter what happens, is to travesty our officers to the law enforcement academy. Previously we do have a sergeant that comes down and gives us some in service training. Right now we are in a process of making it two weeks. We certify them in that aspect, and I think it should be with the State Police Academy. Some of our criteria to be an officer for a tribe is psychological, backgrounds, federal government, and we make sure that they are qualified. In a year you would have to complete a police academy. Before they even hire you, you have to complete a psychological and complete the background. If the psychological says we can't hire you, then we don't. We have some applicants apply that were quite a ways out of state and came up for the interview. As far as the training of the police academy comes to our office to be certified, we will pay for that training if it need be. I do support HB 1504 in every part. It would be taking nothing from the state. It would be taking nothing from the tribe. But it fully gives a lot of credit and power to the officer by being certified.*

I would like people to complete the training and come out of there a certified police officer.

Rep. Froseth: Would the cost of the training be quite comparable to your law enforcement training center in New Mexico, or would it be a lot cheaper to train in ND?

Nelson Hart: It would cheaper for us to train in ND. The federal academy down in New Mexico is 14 weeks. A lot of people don't finish the training down there either, some get lonesome and drop out.

Rep. Froseth: Is the type of training quite similar or is the training in New Mexico more intense than the training offered in North Dakota.

Nelson Hart: I would say it is quite similar, but then we get into a lot of criminal law and practical law. We try to get through some tribal law down there and some parts they do have state instructive. The officer is getting all kinds of law.

Rep. Froseth: Do you think the training here would be adequate to cover the training you need to govern the tribal areas?

Nelson Hart: What we would have to do is complete the states academy here, then take 2 more weeks.

Rep. Haas: Where would that take place?

Nelson Hart: You can do it in New Mexico or sometimes they have satellite training in Montana or South Dakota.

Rep. Froseth: So if you didn't take that additional two weeks training in federal law, they only would be certified in the states and not in the reservation?

Nelson Hart: You would be certified on the reservation.

Rep. Froseth: But you wouldn't be certified?

Rep. Potter: The federal training makes it to where you can do what?

Nelson Hart: You can become a federal police officer. All federal law enforcement train down there in New Mexico except the FBI.

Rep. Amerman: I've heard some good testimony today and I want to make sure that this amendment is doing what you want to have done. I'm not sure it does because it reads "a peace officer who is a member of a police force of a tribal government becomes certified through ND law enforcement". Looking at this email for correction officers, they don't have legal authority to regulate corrections. There is nothing in here that says they have legal authority to train State and Tribal officers. It says if they get certified but how do they get certified if they can't legally do it? So can they legally do it?

Nelson Hart: Well to be very cautious I would say they can as long as we agree to send them there so the state can train them.

Rep. Amerman: I'm just a little confused because the email released for correctional, they are not legally authorized to train your police officers? It doesn't say, but I just want to know if they can do it so you can become certified?

Nelson Hart: I would say yes. The only reason I say that is because when we go to court the only question asked is if you are a police officer.

(In regards to your question Rep. Amerman, I believe that the amendment may not address that issue if it is going to continually be raised in the correctional setting. For my purposes what I'm looking for, I want to be able to have that individual that says yes we can also train tribal officers. So maybe it would have to be an additional amendment).

Rep. Charging: Because the statute says city or municipal. That is precluding any states from not being eligible. For some reason we become eligible. It is because of the way the century code is written that we have that question does it or doesn't it.

Rep. Amerman: I just want to make sure that we do this thing right.

Rep. Charging: You did bring a good point, if there would be an opportunity to address the correctional stuff.

Scott Busching: Testimony Handout.

Rep. Haas: Are your comments basically addressed to the original bill?

Scott Busching: Yes they are.

Rep. Haas: Is there any other testimony on HB 1504? If not we will close the hearing on HB 1504.

2007 HOUSE STANDING COMMITTEE MINUTES

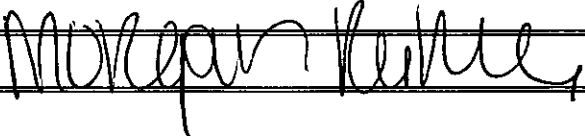
Bill/Resolution No. HB 1504

House Government and Veterans Affairs Committee

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Hearing Date: February 2, 2007

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Committee Clerk Signature 

Minutes:

Rep. Haas: These folks go to the police academy or the training academy in 1983 or whatever it was, and pass the course, and become licensed and now they can't become licensed. We need an answer to that question as to why is that happening.

Rep. Froseth: I don't know if I have a definite answer on the question about what law will supersede each other. I don't know if the state law will supersede the federal law.

Rep. Haas: I think the basis of that discussion has to revolve around the agreements that are ultimately made between jurisdictions, the agreements between the city and the tribe, and the county and the tribe. I think they have to follow all their laws.

Rep. Froseth: As a result of violations and the rest being made and so forth, and going in for the legal system. It could be taken all the way to the state supreme court or in long term to the federal Supreme Court and what is supposed to take precedence?

Rep. Kasper: I would ask committee members to email me by Monday morning some specific questions that you want answered dealing with this discussion.

Rep. Amerman: Where do you want us to start? Who do we ask?

Rep. Kasper: I'd say the last guy to testify. I want to know why he was against this.

Rep. Haas: HB 1510 we will not act on until next Thursday and that will be following the report that we receive from the legislative compensation committee.

Rep. Schneider: How does it work with the appropriations deadlines coming and going this week and next?

Rep. Haas: There is no fiscal note on this bill so it doesn't matter. There is a fiscal note but no money added to it. If there had been a fiscal note that met the requirements for re referral to appropriations we would have had to do it yesterday. I looked through all the bills and identified which ones needed to go to appropriations.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1504

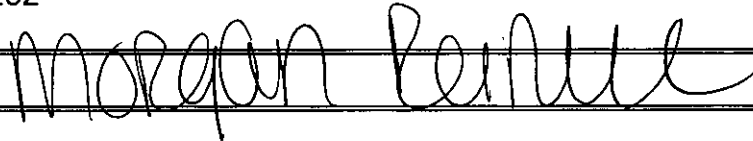
House Government and Veterans Affairs Committee

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Minutes:

Rep. Kasper: This is a hog house amendment. What we are trying to do is first of all defining peace officer. So let's read through number 3 (see amendment attached). What we are saying is that right now the problems the Native American tribal officers are having are their peace officers being recognized as peace officers by the regulators off the reservation. What this says is if they are peace officer on the reservation they are going to be recognized as a peace officer by the rest of the branches in law.

Rep. Dahl: We are defining a peace officer but the amendment says it includes the federally recognized Indian tribes in the state. Maybe it should say the officers of a federally recognized tribe.

Rep. Kasper: Nope. I talked to Jeff Nelson in council and he said that the comma is very misleading. The comma means that the peace officer means is authorized by law or by government agency or branch. Or peace officer means also which includes a federally recognized Indian tribe in the state. It adds that at the end.

Rep. Potter: Will the whole tribe be recognized?

Rep. Haas: No, the federally recognized Indian tribe in this case would be synonymous with a government agency branch.

Rep. Kasper: That is right. Now in order in defining if you qualify with a peace officer but you have to go along with subsection 2 also. Subsection 2 is now talking about a tribal peace officer. A peace officer who is a member of a police force of a tribal government becomes licensed through the ND Law Enforcement Center. So he is now a peace officer, he goes to school and gets licensed. The subject of the rules and procedures that are provided in this chapter. If he is off the reservation he has to abide by the rules and procedures of all the other peace officers.

Rep. Potter: Now you say 'do become licensed in the ND Law Enforcement Center'. I thought that was part of the deal that they couldn't take the test to become licensed?

Rep. Kasper: Well this is saying that in order for you to be recognized as a peace officer off the reservation you have to be licensed with the ND Law Enforcement Center.

Rep. Potter: Are they going to want to take the test then?

Rep. Kasper: Well we are saying that they've got to be licensed. We're not saying that you have to allow them to take the test. When you look at the law, this is saying that you have to be able to take the test otherwise your discriminating. You have a potential big discrimination lawsuit here if they don't. The hidden thing behind this is discrimination. That is the ugly word no one is going to say. A peace officer who is a member of a police force of a tribal government may act off reservation in a law enforcement capacity if the officer is a graduate of a law enforcement center or equivalent law enforcement training center or academy.

Rep. Haas: That would include the one in Texas, right?

Rep. Kasper: Now remember if it is a Texas or New Mexico one they still have to be licensed through the ND law enforcement. They come here and they have to qualify under the ND law. If the tribal peace officer is a graduate of a non ND law enforcement center the officer must show proficiency with ND law to be licensed. A tribal peace officer may not act off reservation

unless there is an agreement between the state, or political subdivision in the tribe that the peace officer is a member, governing the actions of the tribal peace officer off the reservation. This is not saying that any political subdivision must enter into an agreement or that the tribe must enter into agreement, but it's saying if you want the officer to act off the reservation you have to have some entity that says they want to sign an agreement.

Rep. Haas: It is either a city or a county in most cases.

Rep. Kasper: A tribal peace officer acting off reservation pursuing to an agreement with the state or political subdivision is liable for any act or omission of the officer that gives up tribal sovereignty. We are trying to cover all the potential scenarios. The tribal training center may not like it. The trouble is that these tribal officers in parts of ND are maybe the only source of law enforcement and the local people would like to do something with them but they are being stonewalled by the law enforcement centers. So now the legislative's intent is to stop this game, let the tribal officers be licensed, and now if you want to enter into an agreement they can work together.

Rep. Haas: It sounded like from the testimony we heard that there are parts of the state where there is already a good working relationship. But the stumbling block has been this other issue.

Rep. Kasper: I move the amendment.

Rep. Weiler: I second that.

Rep. Haas: Is there any further discussion on the amendment?

Rep. Amerman: Where it says tribal peace officers, a graduate of a non ND law enforcement center, the officer must show proficiency with ND law to be licensed. If we just had someone come from MN and he graduated out of there, does he have to go through our training to get licensed?

Rep. Kasper: Up above that, he must become licensed through ND law is what it says.

Rep. Amerman: So even if they have had training elsewhere?

Rep. Haas: Everyone has to.

Rep. Kasper: They have to be licensed under ND law. The ND law is that it requires that.

Rep. Haas: That doesn't mean they have to take the course. They simply must show proficiency.

Rep. Kasper: Maybe, maybe not. We are leaving that up to them. You could have a police officer that has worked for the FBI for 20 years, the BIA for 10 years, he comes back to ND as the best police officer in the state. If we don't allow that person to be licensed, we are setting a barrier. Let the law enforcement centers look at the facts and make their decision.

Rep. Wolf: Does this deal anything with Correctional officer training?

Rep. Kasper: No. The intent of the bill is what this bill does. The first bill where they had what was on there, wasn't really the intent at all. So we decided to get away from what was on the first bill and get to what they were trying to do and what the problems are.

Rep. Haas: That is actually the amendment that Rep. Charging brought in.

Rep. Weiler: This is the last sentence on there, a tribal peace officer acting off reservation, pursuant to an agreement with the state or political subdivision is liable for any emission of the officer. So if they are off the reservation they are liable. Are other police officers liable for actions?

Rep. Kasper: I would imagine they are.

Rep. Weiler: So why do they need to state that in there? Is it because they use the term sovereign immunity?

Rep. Kasper: Because this is assuming that they are acting off the reservation as a police officer. Therefore if they have got this agreement, and they are doing it legally, it means that he or she is taking some action of a police officer off of the reservation. Maybe they shoot

someone. They can be civilly sued. Maybe they are drunk driving themselves and hit a car. They cannot hide under sovereign immunity and go back to the reservation. They are agreeing to be bound.

Rep. Weiler: Have you talked to both sides about this? Are they both ok with this?

Rep. Kasper: We have talked to Rep. Charging. Rep. Amerman had been trying to locate the police officer that testified and still no luck.

Rep. Grande: Are you looking for Sheriff Busching?

Rep. Kasper: Yes, he's the one that testified.

Rep. Boehning: If a tribal police officer comes off and is deputized by a sub division, can you sue them? What is the recourse of the citizen when you have a tribal police officer that does something that is not proper? What is the recourse against them and against the sovereign nation?

Rep. Kasper: What would be an example of what you are talking about?

Rep. Boehning: Say a police officer would wrongfully shoot someone. That happens occasionally. If it would be a city police officer you can take that and sue the city, etc. Can you sue a tribe?

Rep. Kasper: I don't think this is a tribal sovereign immunity that gives up the individual peace officers because that police officer is acting on his or her own capacity not representing the tribe. He's actually representing the county or political subdivision that they had the agreement with. So the long part would have recourse against the officers. Secondly, you may have recourse against the political subdivision that hired them or agreed to it. That would be in the agreement that they signed. They talked about that agreement.

Rep. Haas: I think that is exactly right. He or she would be acting if it was on a basis of agreement off reservation, they would be acting in a non tribal capacity, the same as a county

Sheriff. What happens with this type of arrangement depends on the terms and conditions of the agreement that is written between the tribal police officer and the political subdivision that wants to have this relationship.

Rep. Kasper: What I also learned is that the tribal police officers have incorporated ND law into their law and how they police their reservations, they don't have their own set block of law. They might have a couple of things that are specific to reservation. They operate under ND statute on the reservation.

Rep. Haas: I think that is true. I think the additional thing is that once they get done with the law enforcement school they get back here and have to take a two week class on federal law. So there are additional requirements for tribal officers.

Rep. Haas: All in favor of the amendment signify by saying 'aye' all opposed say 'no'. The amendment is carried. What are your wishes on the bill as amended?

Rep. Meier: I move a do pass as amended.

Rep. Potter: I second that.

Rep. Grande: I wasn't here for the hearing so I'm trying to read through all the testimony here. I know we have addressed here the agreement between the jurisdiction and the political subdivision off of the reservation and getting an agreement so they can work off the reservation. Was there any discussion about peace officers being able to work on other reservations? I know that this seems to be the discussion too. If you are in pursuit and jump back on the reservation thinking you can't touch me, what happens?

Rep. Kasper: In this agreement that they would come to, they would spell out that certain circumstance. It certainly won't be the one way. They would want it to be both ways. They would outline that in their agreements.

Rep. Haas: I think that came through in the testimony when they were talking about the agreements.

Rep. Boehning: Can't they do these agreements now if they want to? Can't we have them do it back and forth? It seems to me where the problem is with the board.

Rep. Kasper: The problem is that the local entities are having trouble recognizing the tribal police officers as a peace officer. We are clarifying that they are a peace officer under ND law if they abide by what you put into this bill. That clears that up to say here it is and now you have no more excuse for not entering into the agreements.

Rep. Haas: This is not the enabling legislation for agreements. This is simply clarifying the definitions and qualifications of the tribal officers.

Rep. Amerman: I was talking to one of the sponsors. When you mentioned the original bill it just put one of them on the board right? He said that would have been alright if you would have gotten a non voting member. He said be careful because you might not know what you are getting into when you get into this tribal sovereignty. This might solve a lot of things. I'm not big on everything so I'm not sure I want to support the whole bill. This does a good job.

Rep. Haas: I think it's important to note as Rep. Kasper had mentioned that we need to pass this out of here and look at it as a work in progress. We do that with a number of things in the legislative session. When it comes to crossover you do the best thing that you can at the time with the understanding that it is a work in progress. We will certainly convey to the Senate Government and Veterans Affairs Committee that it is such. It will have a full hearing over there. I'm sure that some of the same people will be back to testify on this and clarify it.

Personally I am comfortable with this. I think the subcommittee did an excellent job on refining what we had.

Rep. Kasper: I think that with this new language now that they have a whole new way to look at things compared to that first bill. I say let's get it over there and let them get into this and get rid of what they don't like about this. I'm sure there will be something. They will most likely end up with a better bill than what we have right now. We need to have the dialogue.

Rep. Potter: I totally agree with you on getting it over to the senate. On a further note with that I hope that we can encourage them to try to work out some of the issues that they had. I think we have done well with what we have done.

Rep. Kasper: There is another thing that this bill does. We are trying to begin to assimilate the tribes and the residents of the reservations into normal society. They want to come. They are finally recognizing this and they got some leadership that says we are tribal members but we are also ND citizens so lets begin to work closer together. You have seen our legislative assembly the last couple sessions reach out with special things for the tribes. This is another step forward in that direction, to help them help themselves so they can feel more comfortable about being ND citizens as well as tribal members. This is positive.

Rep. Haas: This is an extremely worthy effort and I agree. Is there any further discussion? If not we will take a roll call vote on a do pass as amended motion on HB 1504. The do pass as amended motion passes with a vote of 11-2-0. Is there a volunteer to carry this to the floor?

Rep. Dahl: I will.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1504

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to tribal peace officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

SECTION 1. Tribal peace officers. A peace officer who is a member of a police force of a tribal government who becomes certified through the North Dakota law enforcement academy is subject to the certification and revocation of certification rules and procedures as provided in this chapter. The certified peace officer is subject to the jurisdiction of the courts of this state if an agreement exists between the tribal government and the state or between the tribal government and a political subdivision which grants authority to the peace officer to act in a law enforcement capacity off reservation."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1504

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to tribal police officers; and to amend and reenact subsection 3 of section 12-63-01 of the North Dakota Century Code, relating to the definition of peace officer for purposes of the peace officer standards and training board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Peace officer" means a public servant authorized by law or by government agency or branch, which includes a federally recognized Indian tribe in this state, to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 2. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Tribal peace officers. A peace officer who is a member of a police force of a tribal government who becomes licensed through the North Dakota law enforcement center is subject to the rules and procedures as provided in this chapter. A peace officer who is a member of a police force of a tribal government may act off reservation in a law enforcement capacity if the officer is a graduate of the law enforcement center or equivalent law enforcement training center or academy. If the tribal peace officer is a graduate of a non-North Dakota law enforcement center, the officer must show proficiency with North Dakota law to be licensed. A tribal peace officer may not act off reservation unless there is an agreement between the state or political subdivision and the tribe of which the tribal peace officer is a member governing the actions of the tribal peace officer off reservation. A tribal peace officer acting off reservation pursuant to an agreement with the state or political subdivision is liable for any act or omission of the officer."

Renumber accordingly

Date: 2-8-07
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HB 1504

Action Taken move amendment

Motion Made By Rep. Kasper Seconded By Rep. Weiler

Representatives	Yes	No	Representatives	Yes	No
Rep. C. B Haas Chairman			Rep. Bill Amerman		
Rep. Bette Grande VC			Rep. Louise Potter		
Rep. Randy Boehning			Rep. Jasper Schneider		
Rep. Stacey Dahl			Rep. Lisa Wolf		
Rep. Glen Froseth					
Rep. Karen Karls					
Rep. Jim Kasper					
Rep. Lisa Meier					
Rep. Dave Weiler					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Rep.

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

Date: 2-8-01
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HB 1504

Action Taken DD pass as amended

Motion Made By Rep. Meier Seconded By Rep. Potter

[illegible]

Total (Yes) 11 No 2

Absent

Floor Assignment Rep. Danl

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

REPORT OF STANDING COMMITTEE

HB 1504: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1504 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to tribal police officers; and to amend and reenact subsection 3 of section 12-63-01 of the North Dakota Century Code, relating to the definition of peace officer for purposes of the peace officer standards and training board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Peace officer" means a public servant authorized by law or by government agency or branch, which includes a federally recognized Indian tribe in this state, to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 2. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Tribal peace officers. A peace officer who is a member of a police force of a tribal government who becomes licensed through the North Dakota law enforcement center is subject to the rules and procedures as provided in this chapter. A peace officer who is a member of a police force of a tribal government may act off reservation in a law enforcement capacity if the officer is a graduate of the law enforcement center or equivalent law enforcement training center or academy. If the tribal peace officer is a graduate of a non-North Dakota law enforcement center, the officer must show proficiency with North Dakota law to be licensed. A tribal peace officer may not act off reservation unless there is an agreement between the state or political subdivision and the tribe of which the tribal peace officer is a member governing the actions of the tribal peace officer off reservation. A tribal peace officer acting off reservation pursuant to an agreement with the state or political subdivision is liable for any act or omission of the officer."

Renumber accordingly

2007 SENATE JUDICIARY

HB 1504

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1504

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 6, 2007

Recorder Job Number: 4431

Committee Clerk Signature *Mona L. Solberg*

Minutes: Relating to definition of tribal police officers standard and training board.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Rep. Dawn Charging, Dist. #4 Introduced the Bill referred to a study of the Tribal States Relations during the Interim study between the tribe and the state leaders. Some points brought fourth by the A.G.'s office as possible solutions. In practice we could not utilize these agreements between the tribe and the state do to the Century Code/legislation. Spoke of a bill introduced to "open a door" for communication (meter 2:10) between the legislation and the tribe and the bill was killed. Spoke to all of the different opinions and 911's effect. The bill is a start with "enabling" language. She spoke to the Counties and there insurance reserve funds findings due to "training" issues. We have 10 tribal police officers who have trained at the ND Law enforcement training center, managed by the highway patrol. Upon completion they can not be licensed due to the jurisdiction they will serve-this is not right. She referred to the size of the reservations and the importance of the tribe to govern and the lack of funding being

proposed. Our problems are with the insurance fund states that the current language is not clear and the issue with the Post Board not recognizing there training.

Sen. Nething stated that this is not a problem with a non-tribal officer currently working on the reservation; i.,e. Sherriff working in his county and part of it is on the reservation. They cited (meter 8:00) an example of an Indian and Caucasian disagreement and who is responsible for who. This bill would permit the tribal officer upon meeting training standard to function off the reservation only upon an agreement provided. "Off" the reservation, means along the boarders or exterior boundaries, only for example; New Town. She referred to areas that do not have a police officer at all. She spoke of other states that have passed this legislation.

Sen. Lyson stated (meter 12:00) tribal police going to the two ND facilities and not being able to receive a license due to location of the work. What other professions do we license in one jurisdiction for another? **Rep. Charging** replied that you do not deny a Dentist a license due to being an Indian. There is no other profession that requires a special license to work on the reservation. **Sen. Lyson** stated that the license there is more then training, spoke of background checks and background proficiencies needed to qualify by the post board. Training only makes you eligible to work as a peace officer. It is upon the acceptance of a job that the post board, upon background checks, finger printing etc, can give the license to the individual. The problem is the tribal police do not have the authority to do this.

Rep. Charging stated that this bill would enable them to have the authority to do this. We are together in every thing we do until we get to this point. They discussed who has what rights where....

Sen. Nething stated that what we seem to be doing is maximizing the ability of our trained law enforcement people to have multiple opportunities to enforce the law. That is what we are trying to accomplish. **Sen. Lyson** stated this can be done with out the bill if we could get

people together with a mutual agreement. Sen. Nething stated that the problem is getting the people together. **Rep. Charging** replied that we are together and are having problems with the licensing board etc., every time they come back to us stating that the legislation will not allow them to do this.

Sen. Lyson stated the Sherriff has to give the permission. With out that the piece of paper is worth nothing. They discussed of the legislation being the start to stop the "round robin" effect. The language is permissive only, it is not a mandate.

Sen. Fiebiger, line 14, if you can't get licensed the rest does not matter? Correct. He continued line 19 and 20, what does show "proficiency" mean. She spoke of an amendment in process to clarify the language. She spoke to the current situation and what is done with training done on the reservation.

Rep. Rod Froelich, Dist. #31 (meter 22:55) spoke of his situation as a non-enrolled member, speeding on a reservation and being pulled over by the B.C.I. and ticketed... He spoke of geographically the area is to large for one person to cover and how the Tribal Police and B.C.I. having been "deputized". He also referred to seeing on of the men on a plane and how he was recognized as a Federal Marshall but not as a ND Police officer. This bill is the frame work only.

Sen. Richard Marcellais, Dist. #9 gave his testimony – Att. #1a and tribal minutes Att. #1b

Tom Disselhorst, Bismarck Attorney who works with the reservation – Att. #2 speaking to the two parts to a license process (meter 29:23), the states involvement in the "standards", licensing and annual reviews along with the liability issues. To answer **Sen. Lyson's** questions, the state is not licensing the jurisdiction on the land itself, over which they do not have jurisdiction over, you are only authorizing that person, upon recognized credentials, on areas where the state has jurisdiction. He spoke of areas on the reservation they have

authority and the "non Indian" occupants. This bill is only referring to the parts the state has the authority only. Spoke of the cross deputizing process (meter 31:50), proficiency portion, details of what the standards need to be and can include licensing, annual reviews to make sure the certifications stand up to the test of times. This is typically the way things are worked out in these agreements. I am bringing forth an amendment to clarify the liability issue that the tribal officers if cross deputized should be treated as regular peace officers on the land that state has jurisdiction on for the purpose of liability. Spoke of were cross deputizing is beneficial for example for drug enforcement, spoke to a grant. Drugs know no boundaries. We need the mechanism where different law enforcements can work together. We need a joint agreement between all the groups. We do not need to fear the process. The agreements themselves will take care of the details if they choice to do it. The agreement should follow the process already described in the century code, between Tribes and State Political Subdivisions. This is a relative easy process and provides due process from both sides.

Sen. Lyson (meter 35:29) took offence to what you say because you act like I am opposed to this. This bill is not needed if those six sheriffs' would get into an agreement with the tribal police and ask the post board to license them as a special deputy. Until do that this will not do any good if we pass it. **Mr. Disselhorst** apologized to **Sen. Lyson** if he gave him the impression that he was acting opposed he was only trying to address his concerns to the licensing part that the state has authority over. We have worked on cross deputizing in the past and I think this will help the process by allowing the state to recognize tribal police officers under certain conditions. **Sen. Lyson** stated that ND law states the post board can not licensee a person unless he has a job from a law enforcement agency. They can be authorized and eligible but not licensed until hired by an agency. Those sheriffs have to only make a request of the board "special deputy rights". Do you see any of those sheriffs hear

today? **Mr. Disselhorst** asked if his only objection was line 14 and 15 of the bill. (meter 37:00)

They discussed the process.

Sen. Nothing stated that the bill states a situation of a person committing into an agreement getting the advise, not to do it, due to nothing in the law saying you can do it. There are lawyers that advise people that way. The idea of this legislation is to let them read it, "yes you can do it". **Mr. Disselhorst** agreed with **Sen. Nothing**, continuing that you do not have to be "cross deputized" by the post board in order to act in a "cross deputized" fashion, referring to BIA officers. They discussed the first sentence in detail.

Rick Oswald, Graduate of law enforcement and Federal Law Enforcement officer (meter 42:00) spoke of the training, history and work history. He gave his credentials that were recognized by the Federal Government. I have 20 years of experience and can not be recognized by my own state. He talked about situation and how safety is first and he you don't discriminate at an accident scene.

Sen. Nothing stated that this legislation is "frame work" only and they referred to many of the officers on the reservations being used as federal marshals.

Capt. Nelson Heart, Captain of Tribal Police Department (meter 47:34) Ft. Berthold Reservation, New Town ND I have 40 years of law enforcement. Spoke of his work history. I am in support of the bill. This is needed and the problem has been around for a long time. He talked about the "post board" being the hang up. We do not want more jurisdiction then we currently have. If the need arises we only want to step in to help.

Testimony Against the bill:

Scott Busching, Williams County Sheriff and Pres. Of Peace Officers Standards and Training Board (meter 50:16) and a Legislative Liaison for ND Sheriff and Deputies Assoc. – Att. #3
The bill is hard to oppose due to what it is trying to accomplish we just do not think this is the

vehicle to do it. This should be done through legislation, not the post board. Spoke of Chapter 11, cross deputizing process. My opposition is the confusion that exists currently and this bill will not end it. The problem boils down to jurisdiction. I would be in favor of an interim study.

Testimony Neutral to the bill:

Ken. Sorenson, Criminal Division of the Attorney Generals Office (meter 1:00:35) What does this have to do with the post board is the question as I understand it. The statute is Chapter 12-63. The post board is the exclusive agency in the state of ND for licensing peace officers for employed by criminal justice agencies in the State of ND and its Political Subdivisions. He referred to lines 15-17 of this bill. No officer becomes licensed at the law enforcement training center it is through the "post board" they give the exam. The bill is technically incorrect. In lines 19 and 20, standard is not proficiency the standard is employment by a law enforcement agency. Discussion of the above (meter 61:00) **Sen. Nething** stated that the special deputy appointed by the sheriff does not have to be a peace officer licensed by post? That is correct, **Mr. Sorenson** replied, that is in the Sheriffs chapter, Ch. 11-15 the code relates to the authority of the sheriffs. 11-15:02 allows the Sherrieff to appoint any person, setting the limits of the position. Spoke of the chapter and how it does not have a license requirement to the process. This is "Special Deputy Appointment" not a "cross deputizing" that term is not accurate.

Sen. Nething stated that we would have to change line 15 to eliminate the confusion. **Mr. Sorenson** spoke of the separate part of the code referring to the authority of the Political Subdivisions of the Counties to contract with tribes it is Chap. 54-40.2 It is an extensive process and the agreement is by statute then goes from the Secretary of State and finally the Secretary of Interior. The glitch in it is Sec. 54-40.208.1, does not authorize any agreements

that increase civil or criminal jurisdiction. **Sen. Nething** replied that they do not want to increase criminal jurisdiction they desire to provide services, you are only cautioning us. Yes.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1504**

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 21, 2007

Recorder Job Number: 3048

Committee Clerk Signature

Minutes: Relating to definition of tribal police officers standard and training board.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Rep. Charging reviewed the amendment for the committee – Att. #1 and the amendment engrossed into the bill, for the committee. She stated that the problem is the insurance and showed her memorandum of agreement with her county. **Sen. Nething** worked his way through the amendment for additional clarity. **Rep. Charging** spoke of the many hours spent to work on the details of the amendment to satisfy every request made.

Sen. Lyson stated (meter 11:58) his hang up was that the state can not license an individual in a sovereign nation, with out the agreement from tribal council and this has not been addressed. **Rep. Charging** stated that it has to be by "agreement" with the tribe and the state by a MOU or Memorandum of Agreement. **Sen. Lyson** replied that now he did not have a problem with this. **Sen. Fiebinger** referred to the section stating that "they may not act in the capacity unless there was agreement between the state political and the tribe? Yes, the language was in the bill but was not clear, and we tried to make it stronger.

Steve Kelly, Attorney for the three affiliated tribes, spoke (meter 14:00) any sovereign can determine what the qualifications are going to be for there police officers. Current the have there own police academy or post board. He spoke of the current process and how the bill

would work. There will be no enforcement authority of that tribal officer, even if he goes through the academy, unless there was an agreement in place in that county. The three tribes have six counties and there would have to be six agreements. This is an opportunity for the tribes and counties to participate in. **Sen. Lyson** asked (meter 17:09) if the amendment has been submitted to the Attorney General's office? **Rep. Charging** replied that they were part of the process; these meted the standards of the century code. Mr. Kelly stated that the fund that insures county/city law enforcement contains an exclusion clause for permits and poly sub divisions from accepting liability by contract. An MOU would be a contract. They want to see what liability is the sub division taking on before they will insure it if they approve it that is fine. This may cost us a little more money and that is o.k.

Sen. Marcellais made the motion to Do Pass Amendment – Att. #1 from today and **Sen. Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Marcellais made the motion to Do Pass HB 1504 as amended and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Lyson**

Senator David Nething, Chairman closed the hearing.

JB
3-21-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1504

Page 1, line 15, replace "becomes licensed through" with "is a graduate of" and after "enforcement" insert "training"

Page 1, line 16, after "chapter" insert "and licensure under this chapter. If the tribal peace officer is a graduate of a non-North Dakota law enforcement training center, the officer must show proficiency with North Dakota criminal and traffic law to be licensed"

Page 1, line 17, replace "act off reservation in a law enforcement" with "enforce state law within the exterior boundaries of a reservation or off reservation"

Page 1, line 18, remove "capacity" and after the first "enforcement" insert "training"

Page 1, line 19, after "academy" insert "and is licensed as provided in this chapter" and remove "If the tribal peace officer is a graduate of a non-North Dakota law"

Page 1, line 20, remove "enforcement center, the officer must show proficiency with North Dakota law to be licensed."

Page 1, line 21, after "act" insert "in the capacity of a state peace officer" and after "reservation" insert "or within the exterior boundaries of a reservation"

Page 1, line 22, replace "of which the tribal peace officer is a member governing the" with ". The state or political subdivision is not liable for any act or omission of a tribal peace officer for enforcement of state law within the exterior boundaries of a reservation. Nothing in this section diminishes or expands the jurisdiction of any tribe or the state."

Page 1, remove line 23

Page 2, remove lines 1 and 2

Renumber accordingly

Roll Call Vote # 1 of 2

BILL/RESOLUTION NO. 1504

☐ Check here for Conference Committee

Action Taken Do Pass Amend. A# #1

Motion Made By Sen. Marcellais Seconded By Sen. Fiebigér

[illegible]

Total Yes 6 No 0

Absent 0

Floor Assignment _____

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

Roll Call Vote # 2 of 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1504

Senate	Judiciary	Committee

☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken

Motion Made By

Seconded By[illegible]

Total Yes 6 No 0

Absent

Floor Assignment

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

REPORT OF STANDING COMMITTEE

HB 1504, as engrossed: Judiciary Committee (Sen. Nethling, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1504 was placed on the Sixth order on the calendar.

Page 1, line 15, replace "becomes licensed through" with "is a graduate of" and after "enforcement" insert "training"

Page 1, line 16, after "chapter" insert "and licensure under this chapter. If the tribal peace officer is a graduate of a non-North Dakota law enforcement training center, the officer must show proficiency with North Dakota criminal and traffic law to be licensed"

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Page 1, remove line 23

Page 2, remove lines 1 and 2

Renumber accordingly

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

HB 1504

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1504

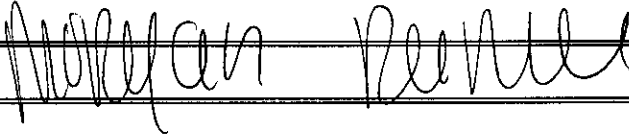
House Government and Veterans Affairs Committee

☒ Check here for Conference Committee

Hearing Date: April 5, 2007

Recorder Job Number: 5767

Committee Clerk Signature



Minutes:

All present.

Rep. Kasper: I have been reviewing of the House side to the Senate. I don't see a lot of similarities. I think maybe we can begin by asking the Senate to tell us about the amendments that you put on the bill and maybe the thought process behind it. That would be great.

Sen. Lyson: I will try to explain the amendments and why. As you can see they are pretty much hog house amendments to the bill. The first part of the bill is really not necessary because it is already in code so that was the reason it was taken out. The rest is to put it in order that was in the second portion of this. Within the section 1 of the amendments, the things in here are the same things that are in the original bill with one exception. The exception is that the agreement has to take place before the license can be issued. That is the main part of the amendment. It is word for word the same, just moved around a little bit and put into different language. That is really the jest of the amendments.

Rep. Kasper: Can you share with us what you didn't like about our bill? Where were the problems that you saw in the bill that we sent over that you decided to amend?

Sen. Lyson: The bill that came over is a bill to change how peace officers are licensed in ND. The law that we have now takes away from people in the state. It puts another entity into it.

The law comes from the century code and the board putting the training board into the century code to set regulations and rules for the peace officers. In doing that as you all know, once the administrative rules are done and they go to the head of that department and he approves them, they go to administrative rules. Once they do that, they are law in ND. That is what changed this. Now we are taking a solvent nation and saying we are going to start licensing them, same as we do with peace officers. There are different regulations in the state of ND. If they are going to fall into the same regulations then I have no problem with them taking the training. They are well trained. Most of them have not taken the test and some refuse to take the test. I don't think it makes a whole lot of difference. If there are more rules than that, beyond that you have to have your background completely done and turned in, including fingerprinting and all of that. You have to show that you are employed by a political subdivision. That is the law now.

Rep. Kasper: Is this ND statute as opposed to Sovereign nation?

Sen. Lyson: Right. So with that I saw no added change. Here is the difference in that. We do this and the people that are licensed now have so many hours of training. If they don't have that they would be called in front of the board. If they didn't get the training in so often, their license get's suspended. If they have a problem with that they can have a hearing that they set up. It's not only for that. It's for conduct. We can do that within the state but now we are dealing with a sovereign nation. Are they going to accept the revocation of a license. If they are, are they going to come to each one of these hearings and object to the findings of the board. These hearings cost \$1,500 a shot. The board has no money. We have a terrible time with the hearings. Those are the reasons that I came up with the amendments.

Sen. Nething: These are the examples right? Of the post board?

Sen. Lyson: Right.

Rep. Kasper: That is the licensing entity too and training?

Sen. Lyson: Yes. They set up the curriculum also.

Rep. Kasper: Then we have the sovereign nation, and licensing and training for their officers

Sen. Lyson: They are not licensed.

Rep. Kasper: They are not licensed.

Sen. Lyson: When I left law enforcement there were only seven states that were licensed. The reason we did that was to be able to control the peace officers within the state and except the regulations that have to be done. We have the licensing bill and now we can control it through the licensing if they don't continue with their training, if they get into trouble, if they have whatever.

Rep. Kasper: If I recall the intent of the house bill that we amended was to allow for a police officer who was employed by sovereign nation to go through the licensing and the training, acceptable to the post board at the post's board's criteria. If the post board said they would meet the criteria than the post board would license that police officer under ND law. Then I think we said that once that is done, the sovereign nation would wish to enter in an agreement with a political subdivision where they could have cross recognition between the police officers on the sovereign nation and the county. If they entered into a written agreement that they both agreed to and spelled out the parameters of the authority that the native American police officer would have off the reservation. Agreed to by all entities, then that would be allowed. That was the intent of our bill, to get around this road block. We tired to set out a procedure to first of all get them licensed and training under the post board. If they can't get that licensing then they would not comply with any other part of ND statute. They still could not have any authority off the reservation unless they had a written agreement with a county or whatever.

Sen. Marcellais: How about within the reservation because it's at Fort Berthold. You have to understand that Fort Berthold got enlarged. In 1972 the reservation went from 8 miles south of Parshall on highway 37 to Makoti. In the bill that you sent over you said they had the write to be a peace officer within the reservation. Are you going to allow them then to police the city of Parshall? All of those towns are not in the reservation. Now we are saying that because you are in the reservation you have to have the federal police?

Rep. Kasper: I think the intent of our bill was to say that subject 2 in agreement with the city of Parshall or city of New Town or the county. And spelling out the parameters that the tribal officers would have.

Rep. Weiler: It was my understanding that as long as there was an agreement between inside or outside that it was ok. That agreement had to be in place. If you're licensing, then you get the agreement.

Sen. Nething: we did it the other way around, we said if you had the agreement that you then get your license.

Rep. Weiler: There was no recognition of any licensing at all under your bill.

Sen. Nething: On line 6 it says the board may issue a peace officer license to a tribal peace officer or the federally recognized Indian tribe in this state who meets the requirements of this chapter the rules adopted by the board and has paid the prescribed license fee if there is an agreement between the state or a political sub division with the tribe in accordance to the chapter.

Rep. Weiler: That was my mistake, I was looking at a different part.

Rep. Potter: Can you help me understand what difference it makes if you're licensed first. I don't understand what difference it makes.

Sen. Nething: That is the same as our standards. Any peace officer in ND has to have a place of employment before they become licensed.

Sen. Lyson: I was the sheriff of William's county. I had the authority. Beyond that I had no authority. That is the same thing. Are we going to give the authority to the tribal police because they got licensed to police the towns within the reservation or off the reservation?

Rep. Kasper: Subject 2 with the written agreement.

Sen. Lyson: The agreement should come before we license. That is what we do.

Rep. Kasper: Your concern is that they would have because they are licensed, they would have authority. Is that what you're saying?

Sen. Lyson: Yes. That is what your bill said. When a person goes to Devils Lake and gets their training and then takes the test. Nobody gets licensed until their in play. That is what I'm saying here. Get the agreement, get the license.

Rep. Kasper: The employment count, if they are employed by the tribe, is that considered employment?

Sen. Lyson: No.

Rep. Kasper: I'm talking about the licensing.

Sen. Lyson: We have no authority to license them because they are a solvent nation.

Sen. Nething: That is what the bill is about, to create the agreement and licensing procedure. That takes us out. We can license it under this proposal. We just changed the order of things occurring with the agreement being first. Then the board can issue its license provided the rules of the board, the license fee's have been paid, and the agreement is in tact. It all comes together at once.

Sen. Lyson: If we want to get more technical, take a sheriff surrounding a reservation. That sheriff says that he's going to deputize the other to work there, he can automatically, after training, be licensed. Now he is a part of the ND law enforcement agency.

Rep. Kasper: What is the significance of the word 'may' on line 6.

Sen. Lyson: The board isn't mandated. They have to make a determination as to take the qualifications or not.

Rep. Kasper: What are the qualifications that have to be met?

Sen. Lyson: That any other peace officer would have the training, the background, the security checks, and all of that.

Rep. Kasper: Let's say that the police officer meets all of those criteria's. Then the license must be issued or may be issued?

Sen. Lyson: It depends upon what the agreement is. The agreement has to be first.

Sen. Nething: Then you go from there into the other thing. IF all the others are issued, I would presume they would be.

Sen. Lyson: It is no different than coming out of the academy at Devils Lake. I went there, didn't have a job, graduated from there and took the test. I was eligible to be licensed. I could not get licensed until a political subdivision appoints me. Until they do that, they send my appointment to someone.

Rep. Kasper: So what you are actually saying is if a tribal officer meets all the criteria, is eligible for everything, passes all the tests, is totally qualified and ready to be licensed. Unless there is an agreement with a political subdivision, he or she cannot be licensed as a police officer of the ND law even though they are operating as a police officer?

Sen. Nething: That is current law. We aren't saying that.

Rep. Kasper: And I attempted to change that bit.

Sen. Nething: That is why we took it to the Attorney General's office and asked them to help us make this bill work. We wanted to help solve that situation and this is what they said to do. That is where our guidance came from.

Rep. Kasper: What I would like to hand out is a memorandum from Steve Kelly who is a tribal attorney. If you turn to the second page it has the difference between the house and senate versions. This is what Mr. Kelly came up with as far as the differences as he sees them. If you look at item 1, let's go through this.

Sen. Lyson: If you look at 62.1-01-01, it determines law enforcement officer the public servant. It goes on to say that a public servant is anybody that is authorized by government agency or branch to enforce any public service. They are a government agency. NO matter what we call them here, they are a peace officer.

Rep. Kasper: Well that is a different section of the law then what is quoted here. So as a tribal peace officer they are peace officers of the ND law now?

Sen. Lyson: Yes. On the reservation.

Rep. Potter: On the reservation but not off.

Sen. Lyson: We have other areas in the law to say if they are transporting a prisoner, anyone of us has the right to transport him. Or for a hot pursuit or chase, we have the right to do that.

Sen. Nething: Only someone employed by a sheriff or city police chief. Even under current law this would be in form of an agreement. Our change talks about an agreement between the jurisdictions. Current law says, as I understand, that the sheriff can make the appointment under the authority he has. I believe a precinct can. I believe the police chief needs authority from the council.

Rep. Potter: Say a tribal officer was on the reservation and is in pursuit of someone that isn't from the reservation? Right now is that ok? Could he arrest whoever that was?

Sen. Lyson: That is where the problem comes in right now.

Rep. Weiler: As long as the pursuit started on the reservation.

Sen. Lyson: There is no difference in a sheriff getting in pursuit of someone in his county, and goes into another county. They can still pursue but they have to notify the next county.

Sen. Nething: You can make the arrest if you apprehend the individual. There is a problem between natives and whites.

Sen. Lyson: When we don't have an agreement the agreement has to be a two way one. It can't be the tribal police can arrest a white, but a white can't arrest a native. I can't understand why we can't get together and get that done.

Rep. Kasper: I think that was the intent of HB 1504.

Sen. Lyson: That was not the intent. It didn't come out that way. I worked in this business for 40 years. I kind of know what goes on. It's not an ethnic thing. It's a situation.

Rep. Kasper: It's a turf thing.

Sen. Lyson: Here is the problem. What I would love to do is have this conference here say lets put this into a study and come up with something in two years.

Rep. Kasper: I think that we could sure consider adding a study resolution. Our intent is trying to come up with some legislation that moves this process forward, even if it is a little bit.

Sen. Lyson: I think your Attorney General is going to tell you that it is impossible.

Rep. Kasper: Than what does a study do? If it's going to take some legislation, we will do that.

Sen. Nething: We are going to have a lot of work on this.

Rep. Kasper: We aren't anywhere near where we need to be. We will adjourn for the day.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1504

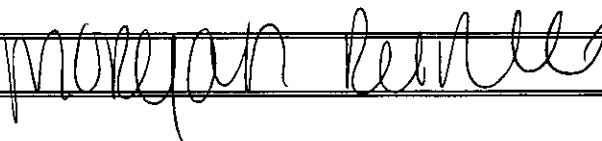
House Government and Veterans Affairs Committee

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Hearing Date: April 10, 2007

Recorder Job Number: 5874

Committee Clerk Signature



Minutes:

Rep. Kasper: When we last had our meeting I had handed out a memorandum from Steve Kelly dated April 2. We will start on talking about the second page where he has referenced how he saw the house version and the Senate version differences on HB 1504. We had gotten to point 1 and then had to adjourn because of the time line. If there is no other preliminary questions or comments, I would like to begin our discussion. If we look at the handout we are trying to resolve these differences in these two bills and come to a compromise that works for both the House and Senate. If we look at Item 1 briefly it says a tribal officer license is recognized as a peace officer under the century code. The senate version has no recognition of tribal officer has a peace officer under code. It appears to be necessary. The house version on item 2 allows tribal or BIA police officers that have graduated from a non ND law enforcement center to be licensed by the state law enforcement center. This is by the board? Provided they can show proficiency with ND criminal and traffic law. In addition they have to meet all the other background requirements to be a licensed police officer.

Sen. Lyson: It's much more than just a background.

Rep. Kasper: I think the bill allowed that even though the summary does not allow that. I think that was part of what the bill said. On the Senate version it does not address the licensure of

non ND law enforcement center graduates. Can you respond to that?

Sen. Lyson: I'm not even sure what they are talking about here. Let's get to the basic point where they are talking about this. Under the law of the state of ND, under the administrative rule, nobody is licensed except people that are employed by a political subdivision or the state of ND. The tribe is not a political subdivision for the state of ND. That is one of the reasons that they aren't licensed.

Rep. Kasper: I think that is the crux of what the House version was trying to get to, to allow the tribal officers to be licensed under ND law by meeting certain criteria. I think that is a major Crux or difference between the two bills.

Sen. Lyson: That is true. There is more than just that involved. To be licensed as a peace officer, we are going to have to change the law that is already there. They says it's only for ND people. We are going to change that so other people can come in. You've got to understand that when a person get's licensed in ND he either goes to one of the academies and gets his training and applies to the board for his license. At the time of the license he has to show the organization that he belongs to. Nobody comes out of the academy just licensed. They are eligible to be licensed and nothing more. They apply to the board and have to put in several different things to the board to show that they passed the test, gone to the school, got their background completed, the psychological and physical thing is completed, plus all of the other requirements that go in there that have to have a high school degree or GED. They have to be side arm qualified which they certainly would be. They have to take the exam, make the payment, and so forth. The other thing that everybody should understand is that we have all kinds of law enforcement people in the state of ND. There is the FBI, US Marshall Service, Boarder Patrol, Drug Units, Customs Law enforcement. None of those people are licensed in ND.

Rep. Kasper: This bill doesn't deal with that anyways.

Sen. Lyson: Well it does.

Rep. Kasper: This is dealing with tribal officers.

Sen. Lyson: It does because these people work in ND. Tribal officers, because of where they are at, the BIA is not licensed in ND. They are tribal officers. The tribal officers are attached to the federal organization because they are set by the federal government.

Rep. Kasper: Let's back up. To the criteria you read. Let's assume that a tribal police officer meets all of the criteria under ND law and is employed by the tribe or the tribal authority and entity to be a police officer on the reservation. What would be the problem if that person meets all the criteria and is employed by the tribe to become licensed as a peace officer under ND law? Where is the problem?

Sen. Lyson: Here is the problem. We give them a license to be peace officers on the reservation. I have no problems with that. We have an awful lot of fee land in the reservations. We have an awful lot of whites living on the reservations. This is why we are talking about a two way street. Are we going to allow them to police the whites on the reservation? The sheriff also has jurisdiction on the reservations against whites. If we are going to allow the tribal police to allow authority to arrest whites on the reservations, are we going to give the Sheriff rights to arrest Indians on the reservation?

Rep. Kasper: Let's take that one step at a time. If they meet the criteria and are employed by the reservation or tribal entity, under the current law now what is their authority and jurisdiction?

Sen. Lyson: Strictly on the reservation.

Rep. Kasper: Let's take that issue. Under once scenario we give them the licensing if they meet the criteria and they can only operate on the reservation with Indians under their authority

unless the second part of the bill says there is a written agreement with the entities such as a city or county that says we will expand the authority of a police officer that is native American.

Sen. Lyson: We did. The amendment that was put in from the Senate puts the agreement first.

Rep. Kasper: And if there is no agreement does the police officer ever get licensed under ND law?

Sen. Lyson: No because he is not employed by a North Dakota political subdivision.

Rep. Kasper: No, he is employed by the tribe.

Sen. Lyson: That is true.

Rep. Kasper: The Senate version says you cannot be licensed as a ND peace officer unless you have an agreement first. The House version says that we would like you to be licensed as a ND police officer if you meet all the criteria under ND law, the background checks and everything, if you want additional authority beyond what you currently have then there has to be a written agreement.

Sen. Lyson: But if you do it that way you look back at the graduates from the academies that come out of there that are eligible to be licensed. We do not license them until they are employed by a political subdivision.

Rep. Kasper: But they can never meet the criteria can they, if they are employed by the reservation or tribe?

Sen. Lyson: They can meet that. They cannot meet this portion. What you aren't hearing is that anybody that comes out of there is not licensed when they come out of the academy until they are employed. When they are out of there if they get employed by a political subdivision they can be licensed.

Rep. Kasper: But if they become employed by a tribe they cannot be? That is our dilemma.

Rep. Potter: You are going to have to help me with this. I understand that they can't be licensed unless they are employed by a political subdivision or the state. I would think that it would be a county or city. What is the problem with considering the tribe with the political subdivision?

Sen. Lyson: I don't think they want it. They are a sovereign nation.

Rep. Potter: It would have to be something that they would be considered. I can't impose that on them, but if that was alright with them would that be a problem?

Sen. Lyson: You are right. That is why I said the agreement first.

Rep. Potter: Then if the tribes agreed that we would consider the reservation at the public subdivision for this, it seems they would be employed by a political subdivision and then would be able to be licensed through the state. Then they could get an agreement with a city or county off of the reservation. That makes sense to me but maybe not to you.

Sen. Lyson: The whole thing is welling down to this. When should the agreement come? If we give people that are not authorized to be licensed, or we don't as a state have any authority on that reservation. If we give them the authority to arrest ND citizens on the reservation that are not native where does that leave us as a state?

Rep. Kasper: Let me go back to what I said earlier. Separate the issues again. The tribal officer who is employed by the tribe or tribal entity passes all of the licensing requirements of the state of ND goes through the board, gets all the background checks, and meets all the criteria's. The fact that the officer is licensed then by the state of ND does not give them any additional jurisdiction other than the fact that they are licensed. The bill could be written so they are licensed and that is it. Now if we want to extend their authority beyond the fact that they are licensed, then there would have to be a written agreement that extends the authority beyond where they currently have authority. If that written agreement were not in effect they

would not have any extension of authority whatsoever. That again is the intent of the house version.

Sen. Lyson: What purpose would it be to license them under the scenario that you just gave us? That piece of paper is nothing more than a piece of paper in their pocket. They already have the authority to do what they want to do on the reservation with the natives. They can do that right now. The license is worthless to them.

Rep. Kasper: I think other parts of the bill would address some of the other what ifs that would make it more valuable. The question is if any ND citizen decides to go through the Police Academy and passes all of the procedures and is employed. They get a license?

Sen. Lyson: Exactly.

Rep. Kasper: Just because a Native American is a Native American that person does not get a license because you work for the wrong employer even though they have met all the criteria under ND law.

Sen. Lyson: Are we going to take somebody into and make them a political subdivision of the state of ND without the state of ND having an agreement with that political subdivision? They are a solvent nation.

Rep. Kasper: I think that goes to the next step then. If the licensing is a separate issue does not extend the authority of the police officer whatsoever. It just recognizes that he or she meets the criteria under ND law to be a police officer and they have a piece of paper. That is all it is. It says they are licensed under ND law. Their authority does not extend one iota beyond where it currently is unless there is a written agreement. Where is the problem?

Sen. Lyson: The problem is that we do that for them where is it going to stop? Are we going to say that the people that graduate from UND in criminal justice, we will license them now and they can look around for a job?

Rep. Kasper: I think that is a very unfair comparison because it is not at all what we are talking about. What I indicated in my example is if they meet the criteria and do the testing, read all the background checks and so forth, then they could be licensed. A UND graduate of criminal law would not meet that.

Sen. Lyson: They do because they go in there and go to the academy at Devils Lake. They are eligible to be licensed.

Sen. Nething: If I understand the process under current law in ND is that you meet all the requirements but you don't get licensed. You don't get licensed until you are employed by a ND political subdivision. That is the current law.

Rep. Kasper: That is the second step. Step 1 is to meet the requirement. Step 2 is be employed.

Sen. Lyson: Then step 3 is getting your license. Those are the orders you have to follow. The problem is that from the reservation they have all the training. They can put all of that together. They put all 7 steps together that are necessary. The problem is that until they become employed by a ND political subdivision they can't get a ND License. They can't be employed until there is an agreement. That agreement comes first. Then assuming they have made those steps, when the agreement comes together all of this comes together and then they get their license. That is what the Senate bill provides. We thought that is what the problem was that we were dealing with.

Rep. Kasper: There is no agreement, there is no license.

Sen. Lyson: Just like there is no license for a ND peace officer. If there is no employment agreement with a political subdivision there is no license.

Sen. Lyson: All these peace officers on the reservation that are qualified for a license now can go and make contact with their sheriff and get appointed deputy for that sheriff.

Rep. Kasper: That requires some type of compensation and if they are performing their duties on the reservation and do not have jurisdiction with whites.

Sen. Lyson: If you want to talk about compensation we can. We have some court decisions on that. It is not part of that, it can be worked out within that. We aren't talking about a special deputy sheriff. If you are talking about a special deputy sheriff the compensation is. If you are talking about a regular deputy, there is nothing in there about compensation. If we cross deputized from one county to another and one county doesn't pay the other counties deputies but he allow them to come in and work. That is the same thing on the reservation without compensation. If the tribal police could get their sheriff to pop this thing out and get deputized by the sheriff they are going to be licensed.

Rep. Kasper: Are you aware of how many of these cross deputizing agreements exist in ND right now?

Sen. Lyson: I don't know.

Sen. Marcellias: I have no idea but I can find out if you want to know how many are cross deputized.

Rep. Kasper: That might be interesting to know. We will just have to call the regional office in Aberdeen.

Sen. Lyson: I think when you talk about cross deputized, they may not be cross deputized. They may be only deputized by the sheriff. The tribe is probably not deputized any of the deputies he has.

Rep. Kasper: Under current practice it is the sheriff that does the deputizing, not the county?

Sen. Lyson: Right, that is law.

Rep. Potter: With this deputizing as it is now, is it just for a certain instance or is it for generally over an extended period of time.

Sen. Lyson: Special deputies are for an incident. Deputizing someone to be a deputy for you with or without compensation is not for that. They can be full time, they can act at that point.

Rep. Kasper: Does this require written agreement?

Sen. Lyson: I don't know.

Rep. Kasper: How do they know the jurisdiction?

Sen. Lyson: There is a line. If they get out of the county that the sheriff is appointed them for they don't have any jurisdiction.

Rep. Kasper: But I mean if the general power of jurisdiction means you can act in any capacity of a police officer in the territory that the agreement is. It wouldn't be limited where you can act in domestic disputes.

Sen. Lyson: If they are going to be deputized by that chair to be a deputy for that full authorization to do anything another peace officer can do.

Rep. Kasper: And there is no paper that verifies that the event occurs?

Sen. Lyson: He could get an ID card from the sheriff and so on. And the sheriff would have to have a personal file on him. I would think he would.

Rep. Kasper: So there is something?

Sen. Lyson: He would have to have his personal file with his record and so on from his schooling.

Rep. Kasper: I think we have also been talking about item 4 which is the agreement that we are trying to understand how and when the agreement needs to be structured and the importance of the agreement, and the timing of the agreement. Number 5 on the House side allows a tribal officer to obtain a license from the state law enforcement training center that is the POST board. Upon employment by the tribe and what the Senate version says is it requires a tribal officer be employed by the tribe and there is a written agreement in effect

before you can be eligible to be licensed. The written agreement has to be first. Am I correct?

Sen. Lyson: Yes.

Rep. Kasper: So where are we as far as our major points of contention on the senate version compared to the House version? It appears to me that the Senate has laid out clearly that the agreement must be in effect first and that if there is no agreement there is no licensing. Is that the crux of where we are at?

Sen. Lyson: Yes. That follows the same for issuing a license to our own law enforcement officers.

Rep. Kasper: So the white officers must have employment before they can be licensed after they have met all the requirements under the law. This applies to sheriffs, highway patrol?

Sen. Lyson: All law enforcement in the state of ND other than federal.

Rep. Kasper: And they have their own rules?

Sen. Lyson: Yes.

Rep. Kasper: Are the federal officers deputized under ND law generally or do they not have jurisdiction other than what the federal law says.

Sen. Lyson: We passed a bill about a month ago giving the US Drug Enforcement Agents authorities to make arrests on felonies only in ND. No, they don't have the authority.

Rep. Kasper: Other than that new authority?

Sen. Lyson: Yes. Other than what we give them. The only ones we have given that to is the FBI and the drug people. To clarify that a little the US Marshalls have authority to make arrests of federal offenses when they get warrants from them. They have that authority. Otherwise they have no authority to arrest in ND. The highway patrol is the same. They only have authority on the highways and on property owned by the state of ND. They have no authority otherwise.

Sen. Marcellais: I don't know if I shared this with your committee. What it is, is minutes from the tribal and state relations committee as of October 10, 2006. It says law enforcement issues in Indian country were discussed. He said that the appointment of a special deputy is not limited to only one time conditions and the special deputy appointed by the sheriff does not have to be a peace officer licensed by the peace officer standards and training board. As a deputy to the county official he said a special deputy has the same peace officer powers as the chair. Unless such powers are limited by the appointment. In some ways he says it is not difficult for a sheriff to appoint a special deputy.

Rep. Kasper: Is that deputy then licensed?

Sen. Marcellais: No.

Rep. Kasper: So that person under that scenario never could do that.

Sen. Lyson: Then you have to go and talk to the Attorney General's office. Many sheriff's have special deputies to operate on other things.

Rep. Kasper: What would be an example of the special circumstance?

Sen. Lyson: I used to have a little town that no deputy was stationed. I deputized someone and said during the times of dances up here, you are a deputy for Williams County. That was the thing. That was a special deputy's rule and you can do that. I think what Bob was talking about in that thing was that the sheriff's can appoint someone as a deputy for the reservation. The other problem that we are coming with is where the line comes and you get into another county. Is it split there or what? The tribal police have authority in their whole reservation. To operate within that county would require another agreement.

Rep. Kasper: We will adjourn for today.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1504

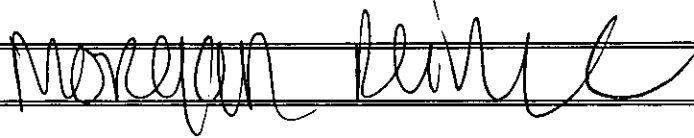
House Government and Veterans Affairs Committee

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Hearing Date: April 12, 2007

Recorder Job Number: 5953

Committee Clerk Signature



Minutes:

Rep. Kasper: We had some discussion in the last day or so with Steve Kelly, Sen. Lyson, and **Sen. Nothing.** I did not get to Sen. Marcellais. In visiting with Steve Kelly he relayed the conversation that he had with Sen. Lyson and it appears that we might be close in coming up with some type of compromise that would work to get this bill moving forward. Sen. Lyson and I had a nice visit a little bit ago. If it would help to move the process forward I would like to suggest to you with your agreement that I appoint a committee of Sen. Lyson and Rep. Weiler to try to work out some language that we could put on either one of the bills. Then run it by the Attorney General's office so that the AG is happy. You can come up with an agreement that he can live with and to get this bill moving forward. Would that work with you?

Sen. Nothing: I agree with what you have just said. Perhaps as they get all of this put together they could have the Attorney General draft the language and the amendment itself so we know everything is right because it is complicated enough without running into that.

Rep. Kasper: Does any committee member have anything that they would like to share with the sub committee as they go to work?

Rep. Potter: Just one thing. One thing that occurred to me is that we have been doing talk back and forth about allowing the police officers for the tribe to go off reservation to apprehend.

When we listened to this bill in committee it seemed to me that it was supposed to be a back and forth arrangement. I haven't heard much of that when we've been talking in our subcommittee where the police officers, whether it is the sheriff or whomever that would be off the reservation. If they were apprehending if they could continue onto the reservation. I don't think we talked about that in our subcommittee. That was my understanding from when we heard the bill in committee. I wanted to make sure that it was still the thought and plan since I hadn't heard anything in that committee.

Rep. Kasper: I think that is what the written agreement would cover, the scope and authority and so forth.

Sen. Lyson: When we talk about apprehension and so on, we have to be careful the words we use. If you apprehend, you have the right. If you are just there you don't have the right.

Rep. Kasper: Will Monday or Tuesday be enough time for the Attorney General's office?

Sen. Lyson: In our discussions I detected that we talk about an agreement. Some times some of us think it's a written agreement. Sometimes some of us think it means an oral agreement. I'd like to have the subcommittee keep that in mind as to whether or not it should be specified.

Sen. Nething: This is something we think we can do without the full blown thing. Chapter 54 is made so that every committee that does something has to be publicized. Every little bit has to be publicized. It's not a bad chapter. It's good for the public. That is why it is in there so that the public can see that. I think what Steve and I were talking about, that is out the window and we can make this agreement work.

Rep. Kasper: We will adjourn for the day.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1504

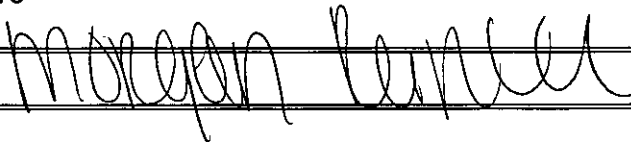
House Government and Veterans Affairs Committee

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Hearing Date: April 18, 2007

Recorder Job Number: 6113

Committee Clerk Signature



Minutes:

Rep. Kasper: We are going to go over amendment .0209 (attached).

Sen. Lyson: Can we talk about section 3 for a bit? The original was this. In the outer borders of the reservation, that is what the original one made up did. I don't see a problem with it. The only thing that bothers me is the authorization in accordance with the conditions of a special deputy, employment agreement between the state or political subdivision and tribe.

Sen. Nothing: It looks to me that A, B, and C is simply said again in 3. What you just read refers to them.

Sen. Marcellais: Usually what they use for terminology like that is they mean on or near the reservation. That is the terminology that I've seen used through Indian countries, on or near the reservation.

Rep. Kasper: The limiting factor for off the reservation is the rest of the item 3. In accordance with the terms and conditions of a special deputy.

Sen. Lyson: That would be a period.

Sen. Nothing: That goes back up to A because you already laid out the 3 kinds so they are just reiterating them again.

Sen. Lyson: They are off the reservation period. We are getting to the state or political subdivision. Can we ask Mr. Kelly what he thinks?

Steve Kelly: I understand exactly what Sen. Lyson is asking. You are only expanding authority here. Any agreement that we enter into has to only address their jurisdiction. The city of Parshall can't give you any jurisdiction beyond what the City of Parshall has.

Sen. Lyson: I just wanted everyone to understand what this says.

Rep. Kasper: And that is the intent of this bill. The city of Parshall could not authorize a police officer to go to Garrison and do things because you need a separate agreement for that.

Steve Kelly: And the same thing would go for McKenzie County and Montreal County.

Rep. Kasper: The agreement is only good where the agreement that is being made has the authority to provide.

Sen. Lyson: So let's say that Mclean County appoints a special deputy. He cannot go into Montreal County in Parshall.

Rep. Kasper: Item 4 says that a tribal peace officer that has a peace officer license under this section is subject to this chapter and the rules adopted by the board including requirements for a license, renewal, and continuing education. They wish to be licensed under ND statute then they have to abide by all the ND law that any other police officer abides by. Number 5 says that the state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe. That is the amendment.

Sen. Lyson: I move to adopt amendment .0209.

Rep. Weiler: I second that.

Rep. Kasper: Is there any discussion?

Rep. Potter: The question that I had last time and it was brought up to me prior to our last

meeting was about county police officers going on to the reservation. I don't see how this addresses that.

Rep. Kasper: It doesn't. In this section we are addressing tribal police officers. There is another section that would address if they were cross deputized in another way.

Sen. Lyson: What we have done here is we have taken out the agreement. The only thing they do here is if they are eligible to be licensed. They are going to get licensed if the Sheriff appoints them as a special deputy or a deputy. Then they can be licensed or if a political subdivision state or the subdivision hires them. There is no agreement needed because they have the right to hire anyone they want. Their license is only good for that jurisdiction, just like the sheriff's deputy in Grand Forks County has no authority outside of Grand Forks County. If they are hired by a city they have no jurisdiction outside the city limits unless the sheriff gives it to them.

Rep. Potter: I understand that but my question is if the Montreal sheriff is in pursuit of someone going on to the reservation, what kind of authority do they have to go on the reservation?

Sen. Lyson: I have been in that pursuit. What you do is call ahead to the BIA and say you are in hot pursuit. We can go on the same as they can come off the reservation in hot pursuit. The authority there comes from that understanding that you are going in there. If you can make the apprehension and take them out of that county. Except for one thing. You can't even in hot pursuit, take a native Indian off the reservation without the extradition.

Rep. Charging: I recognized through the entire old bill that it said peace officers and now it says police officers?

Sen. Lyson: This is a topic from section 62. They are authorized in the first section up here as a peace officer. You aren't going to say peace officer all the time, you are going to say police

officer or law enforcement officer. They all mean the same thing now. That is in the Century Code now.

Steve Kelly: You will remain a police officer until you get licensed. At that point you will become a peace officer. That is why a definition was an issue. I hope that answers the real question. With regard to your question I have a couple things that will help you understand. When we enter into a deputization agreement it could be unilateral that the state will agree that the tribes enforce state law against non Indians. It could be a cross deputization agreement which would also allow us county police officers to enforce tribal law against tribal members. That is subject to an agreement. The state got that authority from the tribe just like the tribe gets that authority from the county or the city.

Sen. Lyson: I think this really clears it up. I have been in contact with these people and they are fine with it.

Rep. Kasper: We will take a roll call vote on a do pass on the amendment .0209. The motion passes 6-0-0. We have to make a motion for the Senate to recede.

Sen. Lyson: I move the senate recede from the senate amendments.

Rep. Weiler: I second that.

Rep. Kasper: The motion passes 6-0-0.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1504

That the Senate recede from its amendments as printed on page 1327 of the House Journal and pages 1141 and 1142 of the Senate Journal and that Engrossed House Bill No. 1504 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to tribal police officers."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Tribal police officers.

1. A tribal police officer of a federally recognized Indian tribe in this state who meets the requirements of this chapter and the rules adopted by the board is eligible for a peace officer license or part-time peace officer license.
2. The board shall issue a peace officer license or part-time peace officer license to a tribal police officer who is eligible for a peace officer license or part-time peace officer license under this section and who has paid the prescribed license fee if:
 - a. The tribal police officer has been appointed as a special deputy in accordance with section 11-15-02;
 - b. The tribal police officer is employed by the state or a political subdivision; or
 - c. There is an agreement between the state or a political subdivision and the tribe for tribal police officers to perform law enforcement services.
3. A tribal police officer who is a member of a police force of a tribal government and who is licensed under this section may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation, or off the reservation, in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.
4. A tribal police officer who has a peace officer license under this section is subject to this chapter and the rules adopted by the board, including requirements for license renewal or reinstatement, annual sidearm qualification, and continuing education.
5. The state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe.
6. This section does not diminish or expand the jurisdiction of any tribe or the state."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number HB 1204 (, as (re)engrossed):

Date: 4/18/07

Your Conference Committee GVA

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen. Lyson			Rep. Kasper		
Sen. Nehring			Rep. Weiner		
Sen. Marcellais			Rep. Potter		

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____, and place _____ on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been 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.

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Lyson

SECONDED BY: Weiner

move amendment
.0209

VOTE COUNT YES NO ABSENT

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HB 1504 (, as (re)engrossed):

Date: 4/18/07

Your Conference Committee GVA

For the Senate:

For the House:

	YES / NO			YES / NO	
Sen Lyson	X		Rep Kasper	X	
Sen Rething	X		Rep Weiner	X	
Sen Marcellais	X		Rep Potter	X	

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE) from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1327 --

____, and place _____ on the Seventh order.

☒ , adopt (further) amendments as follows, and place 1504 on the Seventh order:

____, having been 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.

DATE: 4/19/07

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Sen. Lyson

SECONDED BY: Rep. Weiner

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1504, as engrossed: Your conference committee (Sens. Lyson, Nelson, Marcellais and Reps. Kasper, Weiler, Potter) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1327, adopt amendments as follows, and place HB 1504 on the Seventh order:

That the Senate recede from its amendments as printed on page 1327 of the House Journal and pages 1141 and 1142 of the Senate Journal and that Engrossed House Bill No. 1504 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 12-63 of the North Dakota Century Code, relating to tribal police officers.

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 - a. The tribal police officer has been appointed as a special deputy in accordance with section 11-15-02;
 - b. The tribal police officer is employed by the state or a political subdivision; or
 - c. There is an agreement between the state or a political subdivision and the tribe for tribal police officers to perform law enforcement services.
3. A tribal police officer who is a member of a police force of a tribal government and who is licensed under this section may exercise the powers of a peace officer of this state within the exterior boundaries of the reservation, or off the reservation, in accordance with the terms and conditions of the special deputy appointment, the employment agreement, or the agreement between the state or political subdivision and the tribe.
4. A tribal police officer who has a peace officer license under this section is subject to this chapter and the rules adopted by the board, including requirements for license renewal or reinstatement, annual sidearm qualification, and continuing education.
5. The state or political subdivision is not liable for any act or omission of a tribal police officer exercising peace officer powers authorized by an agreement between the state or a political subdivision and a tribe.

6. This section does not diminish or expand the jurisdiction of any tribe or the state."

Renumber accordingly

Engrossed HB 1504 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1504

HOUSE GOVERNMENT AND VETERAN'S AFFAIRS COMMITTEE
C.B. HASS, CHAIRMAN
FEBRUARY 2, 2007

Good morning, Mr. Chairman and members of the House Government and Veteran's Affairs Committee. My name is Scott Busching. I am the Williams County Sheriff and the Chairman of the North Dakota Peace Officer Standards and Training Board. I also represent the North Dakota Sheriffs and Deputies Association. I am submitting this testimony in opposition to House Bill 1504.

The Peace Officer Standards and Training Board ("POST Board") is responsible for the administration and enforcement of the provisions of North Dakota Century Code Chapter 12-63 governing peace officers who are required to be licensed under North Dakota law. Chapter 12-63 requires the POST Board to establish criteria for peace officer training, curriculum, instructors, and schools, to establish standards for sidearm qualification, and evaluate the qualifications of applicants for a peace officer license.

The duties and powers of the POST Board extend only to those peace officers within its jurisdiction and regulatory authority. Those peace officers required to be licensed by the POST Board under Chapter 12-63 are peace officers employed by the state of North Dakota and its agencies and departments, and peace officers employed by political subdivisions of the state of North Dakota, namely its counties and cities, or any agency or department of a political subdivisions.

Not all persons who perform law enforcement duties in this state are required to obtain a license from the POST Board. Chapter 12-63 excludes auxiliary personnel, reserve officers, private security or private investigators, and any person performing duties as a federal peace officer

The POST Board may only exercise its licensing and regulatory authority over those peace officers required to be licensed under North Dakota law. . Bureau of Indian Affairs and tribal peace officers are federal peace officers. The POST Board does not have any regulatory authority over Bureau of Indian Affairs and tribal peace officers. House Bill No. 1504 proposes to add a peace officer employed by a federally recognized Indian tribe as a member.

Sometimes there is confusion over what it means to have a POST Board license, and that confusion may be part of the reason for this bill.

When the POST Board issues a license to a peace officer who has met all the requirements of state law to receive the license, the license by itself does not give the officer law enforcement authority. That authority comes from separate state law. North Dakota Century Code Section 44-08-20 provides that "[p]eace officers employed by a law enforcement agency within the state have the power of a peace

officer in the following circumstances: 1. To enforce state laws and rules within the jurisdiction of the law enforcement agency by which they are employed. "

In the absence of any specific state statutory authority, a peace officer acting outside of the officer's jurisdiction does not possess the power of a law enforcement officer. For example, a police officer from the city of Williston cannot go outside of the officer's jurisdictional limits, which are 1.5 miles in all directions from the city limits, and make an arrest, unless the officer was in hot pursuit. The Williston police officer would be outside of his or her jurisdiction and would be without any official capacity and without any official power to make an arrest. The North Dakota Supreme Court noted this in a 1987 opinion, State v. Littlewind, in which the court recognized that a BIA Officer did not have statutory authority to stop a driver in Ramsey County, although in that case, the court did recognize a valid citizen's arrest.

I am aware of the jurisdictional questions and problems that come up from time to time on tribal land and between North Dakota law enforcement and tribal enforcement. House Bill 1504 is not the answer to these problems. POST Board membership cannot resolve those issues.

If the intent of House Bill No. 1504 is to open up a dialogue between state and tribal law enforcement about training and jurisdictional issues, then it would be more appropriately done in the form of a study resolution than by changing the composition of the POST Board membership.

The POST Board's opposition to House Bill 1504 is not meant to adversely affect any training opportunities for tribal law enforcement. Tribal law enforcement will still be able to attend the peace officer training program at Lake Region and the basic law enforcement course at the Law Enforcement Training Academy.

**60th LEGISLATIVE ASSEMBLY
HOUSE COMMITTEE ON GOVERNMENT
& VETERANS AFFAIRS
HONORABLE C.B. HAAS, CHAIRMAN &
COMMITTEE MEMBERS**

**TESTIMONY OF MARCUS D. WELLS, JR., CHAIRMAN
THREE AFFILIATED TRIBES
ON HOUSE BILL 1504**

Chairman Haas and Committee Members, my name is Marcus Wells, Jr. and I am the Chairman of the Three Affiliated Tribes. Thank you for allowing me to testify before you today.

I stand before you today in support of the proposed amendments to House Bill 1504 and urge the Committee to recommend a Do Pass to the amendments that Representative Charging has provided today.

The Three Affiliated Tribes employs tribal police officers to maintain law and order on our reservation. The Tribe has sent individuals its officers to the North Dakota Police Academy for training and certification in the past. Unfortunately, certification has routinely been denied our police officers because the Peace Officer Standards and Training Board has determined that it does not have the authority to certify and license a tribal police officer. This has frustrated our tribal police officers because many of them would like to be certified by the state. Thus, legislation is needed to correct this problem.

The proposed amendment to House Bill 1504 would give the Peace Officer Standards and Training Board the authority it needs to certify and license tribal police officers. The amendment would subject a tribal police officer that obtains a license from the State of North Dakota rule and procedures concerning licensure and license revocation set forth in Chapter 12-63 just like any other officer that was certified and licensed by the State Board.

The second sentence of the proposed amendment contemplates an intergovernmental agreement between the State and a tribe, county and a tribe, or a municipality and a tribe. Although we presently do not have any law enforcement agreements in place, the Three Affiliated Tribes has

entered into law enforcement agreements with different counties and municipalities in the past and I am relatively certain that we will enter into such agreements in the near future.

Please note that the amendment contemplates agreements that would allow police officers licensed by the State Board to police outside of our Reservation boundaries. This provision expressly states that tribal police officers that work in this capacity would be subject to state court jurisdiction in the event that the officer was sued by a civilian for duties performed off-reservation. I do not know that our Tribe would patrol off-reservation but if a county requested this type of assistance this provision would allow a tribe to assist a county or municipality making such a request. In any event, this is not possible now because tribal police officers cannot obtain the license required by Section 12-63-02 of the North Dakota Century Code.

This legislation is positive in that it is not binding on tribes that do not desire to take advantage of the State academy. It simply enables tribe that desire to provide State academy training for their tribal officers to do so.

Another positive fact about this legislation is that it allows North Dakota tribes to put their officers on equal footing with State, county and city peace officers certified and licensed by the State. I believe this will result in better relations between State and tribal officers. If this amendment is passed, State and tribal officers will eventually be able to take comfort in knowing that they each have the same training when they provide backup or work together in the field.

This legislation is relatively simple. It contemplates that the details of a law enforcement agreement such as the scope and extent of jurisdiction and liability and insurance issues will be worked out on a case by case basis. I am comfortable with this approach as this is how our Tribe addressed these issues in past law enforcement agreements.

For these reasons, I urge this committee to recommend a DO PASS on HB 1504. Thank you for allowing me to testify and I would be happy to answer any questions you may have for me.

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Tuesday, October 10, 2006

Tribal Council Chamber, Mandan, Hidatsa, and Arikara (MHA) Nation Administration Building
New Town, North Dakota

Senator Bob Stenehjem, Chairman, called the meeting to order at 9:10 a.m.

Members present: Senators Bob Stenehjem, Stanley W. Lyson, David O'Connell; Representatives Duane DeKrey, Kenton Onstad

Members absent: Senator Randel Christmann; Representative Rick Berg

Native American Tribal Citizens' Task Force members present: Ken W. Davis, Chairman, Turtle Mountain Band of Chippewa Indians; Tex G. Hall, Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation; Cheryl Kulas, Executive Director, Indian Affairs Commission; Myra Pearson, Chairman, Spirit Lake Nation

Native American Tribal Citizens' Task Force members absent: Gerald Flute, Chairman, Sisseton-Wahpeton Oyate; Ron His-Horse-Is-Thunder, Chairman, Standing Rock Sioux Tribe

Others present: See Appendix A

Representative Dawn Marie Charging and Senator Dennis Bercier were also in attendance.

It was moved by Senator Lyson, seconded by Senator O'Connell, and carried on a voice vote that the minutes of the May 8, 2006, meeting be approved as distributed.

Chairman Stenehjem recognized Mr. Hall. Mr. Hall introduced Mr. Marcus D. Wells, Jr., Vice Chairman and Tribal Representative for the Four Bears District; Mr. Mervin Packineau, Tribal Representative for the Parshall, Lucky Mound District; and Mr. Nathan Hale, Tribal Secretary and Tribal Representative for the West Segment (Mandaree).

DELIVERY OF SERVICES AND CASE MANAGEMENT SERVICES IN INDIAN COUNTRY

Chairman Stenehjem recognized Ms. Barb Fischer, Manager of Hospital and Long-Term Care Services, Department of Human Services. Ms. Fischer discussed the status of licensing nursing facility and basic care beds on the Turtle Mountain Indian Reservation. A copy of her written comments is attached as Appendix B. She said 2005 House Bill Nos. 1190 and 1191 require basic care and nursing facility beds to be licensed within 48 months of acquisition. She said the beds acquired by the Turtle Mountain Band of Chippewa Indians will begin to reach this threshold in August 2007.

Chairman Stenehjem recognized Mr. Davis. Mr. Davis said the original financing package for the Turtle Mountain Band of Chippewa Indian facility was delayed when the tribe was unable to secure a grant from the United States Department of Agriculture for the facility. He said the tribe then had to put a new financing package together. He said a site has been selected, feasibility studies have been completed, and the design is complete. He said the tribe is confident the new financing package will be completed and construction will commence in 2007. However, he said, the facility will not be completed by August 1, 2007, when the 48-month expiration commences, and thus it will be necessary for the tribe to request an extension during the 60th Legislative Assembly.

In response to a question from Senator Lyson, Mr. Davis said it will take 12 to 18 months to construct the facility once construction commences. He said the tribe plans to work with the Indian Affairs Commission to draft legislation to provide for an extension which will be submitted to the 60th Legislative Assembly.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

Chairman Stenehjem recognized Mr. Mike R. Schwindt, Director, Child Support Enforcement Division, Department of Human Services. Mr. Schwindt provided an update of the interactions between the tribes and the state on child support enforcement services. He reviewed the current status of the relations between the tribes and the state, challenges faced by the state child support enforcement program, and examples of interactions that have been positive. A copy of his written comments is attached as Appendix C.

In response to a question from Mr. Hall concerning a child support enforcement case involving an enrolled member of the Three Affiliated Tribes who was married and divorced from an enrolled member of a South Dakota tribe residing in South Dakota, Mr. Schwindt said many child support enforcement cases are extremely complex and child support enforcement cooperative agreements between the state and a tribe must be beneficial for both the tribe and the state to ultimately benefit the child beneficiary involved. He said if a tribe wishes to, the state and each tribe can craft a separate customized child support enforcement agreement.

METHAMPHETAMINE ISSUES

Chairman Stenehjem recognized Mr. Jerry Kemmet, Director, Bureau of Criminal Investigation, Attorney General's office. Mr. Kemmet discussed the methamphetamine problem and how the state and tribes can work together to confront the methamphetamine epidemic in North Dakota. From January 1, 2003, through October 10, 2003, he said, the state discovered 254 methamphetamine laboratories. He said the state discovered 175 during the same period in 2004 and 184 during the same period in 2005. He said only 38 laboratories have been discovered during the same period in 2006. He said the reason for the decline in methamphetamine laboratories in North Dakota is the work the Legislative Assembly and the Attorney General have done to control the distribution of psuedophedrine. He said methamphetamine laboratories are toxic and very time-consuming to eradicate. However, he said, the majority of methamphetamine present in North Dakota is not produced in North Dakota but is being brought in from out-of-state producers. He said drug traffickers are using the state's highways to traffic the drug and 40 percent of the state's Highway Patrol officers have been specially trained to identify drug couriers. He said the Bureau of Criminal Investigation has grant money available to train tribal and Bureau of Indian Affairs officers to interdict methamphetamine traffickers.

Mr. Kemmet said the Safe Trails Task Force has recently been established. He said the task force is composed of 10 members, including tribal and Federal Bureau of Investigation officers, and is headquartered in Bismarck. He said the task force is establishing contacts on each of the state's reservations to combat the methamphetamine problem. Also, he said, the Bureau of Indian Affairs and the Indian Affairs Commission assisted the United Tribes Technical College in applying for and receiving a grant to fund a program to develop information-sharing techniques between state, federal, and tribal law enforcement agencies. He said the grant is designed to reduce alcohol and drug-related crimes in a borderless environment. He said it is clear the state cannot arrest its way out of the methamphetamine problem and that education and treatment are essential tools in combating this problem.

Mr. Kemmet said the Bureau of Criminal Investigation has also established a postseizure analysis team. He said this team is designed to provide background information on any individual arrested by a law enforcement agency in North Dakota.

Chairman Stenehjem recognized Mr. Hall. Mr. Hall said more resources need to be allocated to combat the methamphetamine problem in North Dakota. He said one project he would like to see is an assessment of how the current efforts to combat the methamphetamine problem are working.

Chairman Stenehjem recognized Dr. David Gipp, President, United Tribes Technical College. Dr. Gipp

said the objective of the task force established under the grant was to develop better communication between the state and the tribes on law enforcement issues. He said the task force learned that because methamphetamine does not respect jurisdictional lines, there needs to be greater cooperation among the state's various law enforcement agencies to combat this problem. He said the task force is grappling with the issue of how sensitive information can be shared among various law enforcement agencies without violating any confidentiality restrictions. He said the task force is being coordinated by Ms. Karrie Azure, Grant Coordinator, United Tribes Multi-Tribal Indian Drug and Alcohol Initiative, and former Assistant Director of the Indian Law Project at the University of North Dakota.

LAW ENFORCEMENT ISSUES IN INDIAN COUNTRY

Chairman Stenehjem recognized Mr. Bob Bennett, Assistant Attorney General, Attorney General's office, who discussed law enforcement issues in Indian country. A copy of a question and answer sheet used by Mr. Bennett in his presentation is attached as Appendix E. He said the North Dakota Supreme Court has recognized that North Dakota Century Code Section 11-15-02 provides a sheriff wide latitude in the appointment of special deputies. He said the appointment of a special deputy is not limited to only one-time conditions and the special deputy appointed by the sheriff does not have to be a peace officer licensed by the Peace Officer Standards and Training Board. As a deputy to a county official, he said, a special deputy has the same peace officer powers as the sheriff, unless such powers are limited by the appointment. In summary, he said, it is not difficult for a sheriff to appoint a special deputy.

Chairman Stenehjem recognized Mr. Mark Fox, Administrator, Justice Center, Mandan, Hidatsa, and Arikara Nation. Mr. Fox distributed an e-mail from Mr. Steven R. Engen concerning training of tribal correctional officers at the North Dakota Law Enforcement Training Academy. A copy of the e-mail is attached as Appendix F. Mr. Fox requested the committee examine the issue of training correctional law enforcement officers at the state Law Enforcement Training Academy.

In response to Mr. Fox's presentation, Chairman Stenehjem said he would contact the director of the Law Enforcement Training Academy to review this issue.

Mr. Fox again addressed the committee. He said tribal law enforcement agencies are very active in trying to stop drugs from entering the reservations. He distributed a price list prepared by the Bureau of Criminal Investigation showing the average street drug price as of March 23, 2006, a copy of which is attached as Appendix G. He said it will take a cooperative effort between state and tribal authorities to stop the illegal importation of drugs on to the state's

PEACE OFFICER STANDARDS

Title 109 of the North Dakota Administrative Code
Effective July 2006

Index

<u>109-01-01</u>	GENERAL ADMINISTRATION
<u>109-02-01</u>	GENERAL PROVISIONS
<u>109-02-02</u>	LICENSING AND TRAINING REQUIREMENTS
<u>109-02-03</u>	MINIMUM STANDARDS OF TRAINING PRIOR TO CARRYING A WEAPON
<u>109-02-04</u>	INSTRUCTOR AND TRAINING COURSE CERTIFICATION

*See Admin Code
in Leg Council library*

CHAPTER 12-63
PEACE OFFICER STANDARDS, TRAINING AND LICENSING

12-63-01. Definitions. As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. "Part-time peace officer license" means a license issued to an individual authorized by law or appointed by a criminal justice agency of this state on a salaried or nonsalaried basis to enforce the law and to conduct or engage in investigations of violations of the law for no more than an average of twenty hours per week, not including time spent on call when no call to active duty is received, calculated on an annual basis.
3. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

12-63-01.1. Peace officer standards and training board - Membership - Duties. The peace officer standards and training board consists of nine members including the director of the law enforcement training center, six peace officers, one county government representative, and one city government representative. With the exception of the director of the law enforcement training center, all members must be appointed by the attorney general and serve staggered two-year terms. With the exception of the county government representative, the city government representative, and the director of the law enforcement training center, a member may not serve more than three consecutive terms. The attorney general shall also appoint the chairman of the board. The office of attorney general shall provide support staff to the board, including an employee to serve as the secretary of the board and as an ex officio nonvoting member of the board.

12-63-02. License required. An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed as required in this chapter.

12-63-02.1. Part-time peace officer license.

- Rules #*
1. Except as provided in this section, all provisions of this chapter apply to part-time peace officer licenses. Except as limited by this section, a part-time licensed peace officer of this state has the authority of a licensed peace officer of this state.
 2. The board shall issue a part-time license to any individual appointed by a criminal justice agency who meets the requirements of this chapter and the rules of the board for a part-time peace officer license.
 3. A criminal justice agency may appoint part-time licensed peace officers to supplement and assist licensed peace officers. A criminal justice agency may not appoint a part-time licensed peace officer unless the part-time licensed peace officer acts under the direct or indirect supervision of a licensed peace officer designated by the criminal justice agency.
 4. A part-time licensed peace officer may not exercise peace officer duties, including the exercise of arrest authority, when off duty.
 5. Unless the part-time licensed peace officer has a valid North Dakota concealed weapons license, a part-time licensed peace officer may not carry a duty weapon or concealed weapon when off duty.

6. The board shall establish criteria for part-time licenses, including training curriculum, examination requirements, weapon training and certification, licensing requirements, and continuing education requirements.
7. The board shall adopt rules to implement part-time peace officer licenses and shall establish by rule fees for application for examination, initial licensing, renewal and late renewal, and reinstatement of part-time peace officer licenses.

12-63-03. Persons and practices not affected. This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
3. A person who provides private investigative services in this state.
4. A person doing private security work or any private security agency.
5. A person performing peace officer duties in an official capacity as a federal officer.

12-63-04. Board - Powers - Duties - Authority. The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
 - d. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.

12-63-05. Fees. The board shall prescribe by rule the fee for application for examination, for an initial license, for renewal of a license, and for late renewal of a license. The board shall administer fees received under this chapter in accordance with section 54-44-12.

12-63-06. Application for license. An applicant for a license as a peace officer shall file a written application provided by the board showing to the satisfaction of the board that the applicant:

1. Is of good moral character.
2. Possesses a high school diploma or general education equivalency certificate.
3. Has had a complete background investigation conducted by the parent agency or the division.
4. Has passed a medical and psychological examination approved or prescribed by the board.
5. Has successfully completed a training program recognized by the board.
6. Has passed an examination as provided in section 12-63-07 or has arranged to take such an examination and is eligible for a limited license under section 12-63-09.
7. Has complied with rules of the board.

12-63-07. Examination for license.

1. Only a person satisfying the requirements of subsections 1 through 5 of section 12-63-06 may apply for examination. The application must be filed in the manner the board prescribes and be accompanied by the fee prescribed under section 12-63-05. The fee is nonrefundable. A person who fails an examination may apply for reexamination upon payment of the prescribed fee.
2. Each applicant for licensing must be examined by written examination as established by the board.
3. Applicants for licensing must be examined at a time and place and under supervision as the board requires.
4. Applicants may obtain their examination scores and may review their papers in accordance with rules adopted by the board.

12-63-08. Exception from training requirement - Issuance of certain licenses as of right.

1. Peace officers with experience or training outside this state before January 1, 1989, may qualify for exception from portions of the training requirement. The applicant shall apply to the board for an exception. After review the board may grant a complete or partial exception. Before the issuance of a license, the applicant must successfully complete the written examination.
2. The board shall grant a license to any person certified as a peace officer before July 1, 1989.

12-63-09. Limited license. Pending successful completion of the written examination required in this chapter, the board may grant a limited license to a person who has completed the education, medical, and psychological examination requirements and has been qualified to carry a sidearm. The limited license allows the person to practice peace officer duties in accordance with rules of the board. Except as otherwise provided, the limited license is valid for no longer

than the earlier of the expiration of the next available training session, until the person is issued a license under section 12-63-10, or until the limited license is suspended or revoked by the board. After being employed but before taking the written examination, the person shall attend the first available basic training program recognized by the board. The limited license may be renewed one time if the person has failed the examination. On terms and conditions prescribed by the board, the limited license is limited to the jurisdiction in which the person is employed.

12-63-10. Issuance of license. The board shall issue a license to any person who meets the requirements of this chapter and who has paid the prescribed license fee.

12-63-11. Renewal of license.

1. A license expires three years from the date of its issuance and must be renewed in the manner prescribed by the board and on payment of a renewal fee and on a show of proof that the individual has met the requirements established by the board for continuing education. The board may provide for the late renewal of a license on payment of a late fee, but a late renewal of a license may not be granted more than one year after expiration of the license.
2. On request, the board shall grant inactive status to a licensee who does not perform the duties of a peace officer.

12-63-12. Adverse license action - Appeal.

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license, or may impose probationary conditions if the person:
 - a. Has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of an offense determined by the board to have a direct bearing upon a person's ability to serve as a peace officer, or the board determines, following a conviction or adjudication, that the person is not rehabilitated under section 12.1-33-02.1.
 - b. Has used unjustified deadly force in the performance of the duties as a peace officer as described in section 12.1-05-07.
 - c. Has made a false material statement under oath to the board.
 - d. Has made a false material statement to the board while obtaining or renewing a license or permit.
 - e. Has violated this chapter.
2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the refusal to renew or the revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement. In the case of a denial of an application, the applicant may not reapply for a period of one year from the date of the order of denial.
3. An appeal from the final decision of the board to refuse to issue, to not renew, to suspend, or to revoke a license may be made to the district court. Venue is the county in which the aggrieved person resides. The appeal must be made within ninety days from the service of the decision on the person.

12-63-13. Notice and hearing on adverse license action. The board may, on a verified complaint of any person setting forth facts which, if proven, would constitute grounds for

refusal, suspension, nonrenewal, or revocation of a license, investigate the actions of any person holding or claiming to hold a license. Before taking the adverse action, the board shall, at least ten days before the date set for the hearing, give written notice to the subject of the adverse action of any charges made and shall afford that person an opportunity to be heard in person or by counsel on the matter. The written notice may be served by personal service or by registered mail. If service cannot be made by personal service or registered mail, then service may be made by publication in the county of residence specified by the person in the person's last communication with the board. At the time and place fixed in the notice, the board shall conduct the hearing on the charges. Both the accused person and the complainant are entitled to ample opportunity to present in person or by counsel, statements, testimony, evidence, and argument pertinent to the charges or to any defense. The board may continue the hearing from time to time.

12-63-14. Penalty. Any person who willfully violates this chapter is guilty of a class B misdemeanor.

12-63-15. Temporary suspension - Appeal.

1. The board may order a temporary suspension of a peace officer's license ex parte if the board finds, based on verified evidence, probable cause to believe that:
 - a. A peace officer has violated this chapter or a rule of the board;
 - b. Continued performance of peace officer law enforcement duties would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending; and
 - c. Immediate suspension of the peace officer's license is required to reasonably protect the public from that risk of harm.

For purposes of this section, evidence is verified if sworn to before an officer authorized to administer oaths or equivalent affirmations.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the license at a time not later than sixty days after the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the peace officer with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The peace officer may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition. Unless otherwise ordered by the district court, an appeal by the peace officer of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary license suspension.

12-63-16. Costs of prosecution - Disciplinary proceedings. In a disciplinary proceeding in which disciplinary action is imposed against a peace officer, the board may direct the peace officer to pay the board a sum not to exceed the reasonable and actual costs of the case, including reasonable attorney's fees incurred by the board or its authorized representatives in the investigation, prosecution, resolution, and hearings, whether held before the board, a hearing officer, or administrative law judge. When applicable, the peace officer's license may be suspended until the costs are paid to the board. A peace officer may challenge the reasonableness of any cost in a hearing under chapter 28-32. The administrative law judge may

approve, deny, or modify any cost, and determination of the judge is final. If requested, the hearing must occur before the peace officer's license may be suspended for nonpayment.

CHAPTER 44-03 DEPUTY OFFICERS

44-03-01. Deputies may be appointed by certain officers. The secretary of state, state auditor, state treasurer, insurance commissioner, agriculture commissioner, commissioner of labor, district assessor, and city assessor each may appoint a deputy. The appointment must be in writing and is revocable in writing at the pleasure of the principal, and the appointment and revocation must be filed as the oath of the principal is filed.

44-03-02. Persons ineligible as deputy. No state officer can appoint as deputy any other state or district officer. A state treasurer may not appoint as deputy any county treasurer, recorder, sheriff, or county commissioner.

44-03-03. Oath of deputy. Each deputy shall take and subscribe the same oath as the deputy's principal, naming the deputyship, which must be endorsed upon and filed with the deputy's certificate of appointment.

44-03-04. Officials to be residents and citizens. No person may be appointed as deputy in any state office nor as a member or officer upon any official board of the state, or of any county or municipality of the state, who is not a citizen of the United States and who is not a bona fide resident of the state.

I.C.A. § 80B.18

IOWA CODE ANNOTATED
TITLE III. PUBLIC SERVICES AND REGULATION
SUBTITLE 1. PUBLIC SAFETY
CHAPTER 80B. LAW ENFORCEMENT ACADEMY

80B.18. Law enforcement officer--tribal government

Peace
A ~~law enforcement~~ officer who is a member of a police force of a tribal government and who becomes certified through the ~~law~~ law enforcement academy shall be subject to the certification and revocation of certification rules and procedures as provided in this chapter. The certified law enforcement officer shall be subject to the jurisdiction of the courts of this state if an agreement exists between the tribal government and the state or between the tribal government and a county, which grants authority to the law enforcement officer to act in a law enforcement capacity, ~~off a settlement~~ *off-reservation.*

CREDIT(S)

Added by Acts 2003 (80 G.A.) ch. 87, § 4.

I. C. A. § 80B.18, IA ST § 80B.18

Current through Acts of 2006 Reg. Sess. & 1st Ex. Sess. © 2006 Thomson/West
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municipality or county



GERALD TEX FOX JUSTICE CENTER

P.O. Box 1000, New Town, ND 58763
(701) 627-5300, 627-5310(fax)

February 1, 2007

North Dakota Legislature
State Capitol Building
Bismarck, ND 58502

Dear Honorable Members:

It is my honor and privilege to offer this information and support for House Bill No. 1504, relating to the membership of the peace officer standards and training board. I am the Administrator for the Gerald Tex Fox Justice Center, a federally-funded detention facility owned and operated by the Mandan, Hidatsa, and Arickara Nation. We currently employ thirty-seven correctional officers and our facility is designed to hold approximately eighty inmates, both juvenile and adult.

Our federal contract requires that our officers are properly trained and certified at the Indian Police Academy (IPA) in New Mexico, or "its equivalent". The IPA training is eight weeks in duration and the time and distance can be extremely burdensome for our staff members. It has always been an unfulfilled need for our operations to have an alternative to the IPA training to address these concerns with time and distance.

My continuous frustration is that although we have attempted to utilize the North Dakota Law Enforcement Training Academy (LETA) as an equivalent option to certify our staff, we have been met with both denial of our applicants and informal opposition to further discussion of training opportunities (see attached).

I assert that an inclusion of a tribal peace officer on the standards and training board will have a positive impact on tribal-state relations and cooperative efforts, and will serve to benefit all citizens of North Dakota. Please strongly consider our concerns, and this House Bill which could serve the common-interest of law enforcement and safe communities throughout the State of North Dakota.

Respectfully Yours,

Cc: Tribal Business Council,
Mandan, Hidatsa, and Arickara Nation.

Testimony
**House Bill No. 1504 – Relating to the membership of the peace
officer standards & training board**

Government & Veterans Affairs Committee
Representative C.B. Haas, Chairman
February 2, 2007

*Same to
Senate*

Chairman Haas, members of the Government & Veterans Affairs Committee, I am Senator Richard Marcellais, from District 9, of Belcourt I am here today to provide you with testimony on House Bill 1504 relating to the membership of the peace officer standards & training board.

North Dakota Supreme Court recognizes that North Dakota Century Code Section 11-15-02 provides a sheriff wide latitude in the appointment of special deputies. The Assistant Attorney General said that appointment of special deputy is not limited to only one-time conditions and the special deputy appointed by the sheriff does not have to be a peace officer licensed by the Peace Officer Standards and Training Board.

As a deputy to a county official, a special deputy has the same peace officer powers as the sheriff, unless such powers are limited by the appointment. In summary, it is not difficult for a sheriff to appoint a special deputy.

Thank you very much for the opportunity to appear in support of House Bill #1504.

HH #2
3-6-07

THOMAS M. DISSELHORST
ATTORNEY AT LAW

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CELL No. 701-421-1646

North Dakota State Legislature
60th Legislative Assembly

Senate Judiciary Committee

Hearing on HB 1504

March 6, 2007

Testimony of Thomas M. Disselhorst
Attorney at Law
in Support of HB 1504

Mr. Chairman and members of the Senate Judiciary Committee. This testimony is provided in support of HB 1504 as it is currently drafted, along with a suggestion for a friendly amendment.

For most of the past 31 years, I have been associated with United Tribes Technical College as general counsel. For identification purposes only, I am now full-time the general counsel at United Tribes, which has on its board of directors all five of the Chairman of the federally recognized Indian tribes with a presence in North Dakota. The same board for United Tribes serves as the board for United Tribes of North Dakota which works on state, regional and national issues affecting the North Dakota tribes.

In addition, for most of the past 15 years, I have been counsel for first the Turtle Mountain Band of Chippewa and then the Three Affiliated Tribes. In that capacity I have revised and negotiated the kinds of cross-deputization agreements referred to in the present version of HB 1504. A cross-deputization agreement simply allows the peace officers of one jurisdiction to act in another jurisdiction, at the request of the peace officers in the jurisdiction where the assistance is required. This does not in any way mean that the peace officer whose assistance is requested can apply the law of the jurisdiction from which that peace officer comes to the jurisdiction which is requesting the assistance. This is a common misunderstanding about these agreements – that somehow the state police officer acting on the reservation, or the tribal officer off the reservation, will be applying the law of the jurisdiction from which they originate.

Thus, one of the recurring issues in cross-deputization agreements has been police officer standards – a requirement that to be cross deputized, the peace officer should be familiar with the law of the jurisdiction in which the peace officer may be called to provide services at some point and the training standards for that jurisdiction. HB 1504 originally asked that a enrolled member of a federally recognized Indian tribe in North Dakota sit on the peace officer standards commission to help resolve that issue.

As it is currently drafted, HB 1504 tackles the standards issue a different way, by stating that in order for a cross-deputization agreement between a tribal police force and the state or political subdivision to be effective, the tribal peace officers must be trained in the state law enforcement academy or its equivalent, or show proficiency with North Dakota law. This is a reasonable requirement, and of course, I am confident that North Dakota tribes would expect the same of North Dakota peace officers regarding tribal law in any true cross-deputization agreement, as has been the case in the agreements I have helped draft or revise.

HB 1504 also goes on to note that tribal peace officers will be liable for their acts while acting in accordance with any cross-deputization agreement. The proposed amendment is simple: before the period at the end of line 2 of page 2, add the words:

“to the same extent as any other authorized peace officer. Nothing in this section shall be construed to add to or diminish the sovereign immunity of any federally recognized Indian tribe.”

The reasons for these amendments are:

- 1) to make sure that tribal peace officers are treated in the same manner as other state peace officers regarding liability; and
- 2) to make it clear that the sovereign immunity of the tribe served by the tribal peace officer acting within the kind of cross-deputization mentioned in HB 1504 is not affected by the clause regarding liability of the officer.

The issue of liability of peace officers is also one that is typically handled in the cross-deputization agreement, and can be a difficult issue to resolve given the nature of police work generally. Typically, if the peace officer is acting in another jurisdiction, he or she will be subject to the laws of the other jurisdiction regarding liability, and in fact will be acting under the control of other peace officers within that jurisdiction. The liability therefore is not only potentially that of the officer, but also of the state. That is another reason to make clear that tribal peace officers acting under a cross-deputization agreement should be treated as are other peace officers in the state.

The reason for cross-deputization agreements in the first place is generally to allow jurisdictions to cooperate that are next to one another, or that in fact may have jurisdictions that overlap, as happens on all of the Indian reservations in North Dakota because of the presence of non-Indians on the reservations and non-Indian lands within the reservations over which tribal peace officers have limited or no jurisdiction. This simply makes good sense – and is a situation which relatively frequently occurs on the reservations now because of the presence of casinos. For rural sheriff's departments operating in the vast spaces of North Dakota, the assistance of tribal police officers during weather emergencies or in other situations can also be critically important.

Finally, still another reason for such agreements is in the area of enforcement of illegal drug laws. Drugs do not recognize reservation boundary lines. The need for cooperative law enforcement in this area is great, and it is important that peace officers be adequately trained before handling such issues.

For the reasons stated above, I recommend that the Senate Judiciary Committee give HB 1504 a DO PASS recommendation, amended as I have suggested.

AA #3

3-6-07

SENATE JUDICIARY COMMITTEE
SENATOR DAVE NETHING, CHAIRMAN
MARCH 6, 2007

Good morning, Mr. Chairman and members of the Senate Judiciary Committee. My name is Scott Busching. I am the Williams County Sheriff and the Chairman of the North Dakota Peace Officer Standards and Training Board. I also represent the North Dakota Sheriffs and Deputies Association. I am submitting this testimony in opposition to Engrossed House Bill 1504.

The Peace Officer Standards and Training Board ("POST Board") is responsible for the administration and enforcement of the provisions of North Dakota Century Code Chapter 12-63 governing peace officers who are required to be licensed under North Dakota law. Chapter 12-63 requires the POST Board to establish criteria for peace officer training, curriculum, instructors, and schools, to establish standards for sidearm qualification, and evaluate the qualifications of applicants for a peace officer license. The POST Board does not operate the Law Enforcement Training Center in Bismarck and it does not operate the Law Enforcement Training Program at Lake Region State College. The Board's authority goes to the curriculum and the qualifications of the instructors in these programs.

The duties and powers of the POST Board extend only to those peace officers within its jurisdiction and regulatory authority. Those peace officers required to be licensed by the POST Board under Chapter 12-63 are peace officers employed by the state of North Dakota and its agencies and departments, and peace officers employed by political subdivisions of the state of North Dakota, namely its counties and cities, or any agency or department of a political subdivisions.

Not all persons who perform law enforcement duties in this state are required to obtain a license from the POST Board. Chapter 12-63 excludes auxiliary personnel, reserve officers, private security or private investigators, and any person performing duties as a federal peace officer. The POST Board considers tribal police officers to be federal peace officers along with the Federal Bureau of Investigation, the United States Marshal's Service, the Drug Enforcement Agency, and federal law enforcement in Homeland Security, including the Secret Service,

Alcohol, Tobacco, and Firearms, and Immigrations and Customs Enforcement and Border Patrol.

When the POST Board issues a license to a peace officer who meets the requirements of state law to receive the license, the license by itself does not give the officer law enforcement authority. That authority comes from separate state law. North Dakota Century Code Section 44-08-20 provides that "[p]eace officers employed by a law enforcement agency within the state have the power of a peace officer in the following circumstances: 1. To enforce state laws and rules within the jurisdiction of the law enforcement agency by which they are employed. " In the absence of any specific state statutory authority, a peace officer acting outside of the officer's jurisdiction does not possess the power of a law enforcement officer. For example, a police officer from the city of Williston cannot go outside of the officer's jurisdictional limits, which are 1.5 miles in all directions from the city limits, and make an arrest, unless the officer was in hot pursuit. The Williston police officer would be outside of the officer's jurisdiction and would be without any official capacity and without any official power to make an arrest. The North Dakota Supreme Court noted this in a 1987 opinion, State v. Littlewind, in which the court recognized that a BIA Officer did not have statutory authority to stop a driver in Ramsey County, although in that case, the court did recognize a valid citizen's arrest.

I am aware of the jurisdictional questions and problems that come up from time to time on tribal land and between North Dakota law enforcement and tribal enforcement. Engrossed House Bill 1504 does not resolve any of these problems.

If the intent of Engrossed House Bill No. 1504 is to open up a dialogue between state and tribal law enforcement about training and jurisdictional issues, then it would be more appropriately done in the form of a study resolution involving state, local, and federal law enforcement.

The POST Board's opposition to Engrossed House Bill 1504 is not meant to adversely affect any training opportunities for tribal law enforcement. Tribal law enforcement will still be able to attend the peace officer training program at Lake Region State College in Devils Lake and

the basic law enforcement course at the Law Enforcement Training Center in Bismarck.

HTT #2 3-21-07

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

Post Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Senator Nething
Chairperson, Senate Judiciary Committee
Testimony on HC 1504, as amended
March 2007

Members of the Senate Judiciary Committee:

My name is Shelly Carlson and I am the Criminal Justice Project Coordinator at the ND Council on Abused Women's Services, hereinafter referred to as CAWS. I am respectfully submitting information in support HB 1504.

I coordinate the Grants to Encourage Arrest Program in my position at NDCAWS. In the grant award year of 2004-2006 I led the development of a model domestic violence policy for law enforcement in North Dakota. The policy was developed with the assistance of 25 law enforcement officers from across the state including BIA, 1 prosecutor, 8 advocates, and 2 dispatchers. The issue of cross deputization was discussed at length during the development of the model policy. Most disturbing was the fact that due to the *lack* of cross deputization across North Dakota, victim safety is greatly diminished to the point where victims often slip through the cracks.

For example, if a non-Native person commits a misdemeanor assault on a Native person on a reservation, technically federal law enforcement agencies would have jurisdiction. However, due to their tremendous caseload of felony level crimes, the misdemeanor crimes often go uninvestigated. State law enforcement agencies (typically the county sheriff's department) does not have jurisdiction over the case because it involves a Native individual. And, because the perpetrator is not a Native person, the tribal law enforcement doesn't have jurisdiction. This creates situations where victims are continually assaulted, strangled, and threatened and the offender is never held accountable.

According to the Department of Justice, Bureau of Crime Statistics' "American Indians and Crime Report 1992-1996": Native women are victimized at a rate 50% higher than

black males; raped at a rate double that of all other races; and at least 70% of violence experienced by Native Americans is committed by persons of a different race.

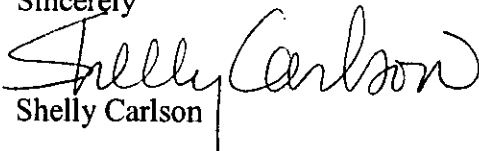
Additionally, the report states that Native women were victimized by an intimate at a rate higher than those for all other females (whites at 8.1 per 1,000; Native Americans at 23.2 per 1,000). It is because of these alarming statistics and because of situations described above that North Dakota must do something to combat violence against women, especially our Native women.

This bill would allow victims of these jurisdictional nightmares the ability to seek justice in the criminal system and would assist society to holding the offenders accountable.

Law enforcement – federal, state, and tribal – needs this resource to increase their ability to assist domestic violence victims.

I respectfully request you recommend a "Do Pass" on this bill.

Sincerely

A handwritten signature in cursive script that reads "Shelly Carlson". The signature is written in dark ink and is positioned above the printed name.

Shelly Carlson

NDCAWS

Lobbyist #302

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Dear Senator Nething:

Attached is some testimony from the Council on Abused Women's Services regarding HB1504. I understand that you are holding the bill for some amendments. We did not testify at the original hearing, but this is an issue which has been of great concern to us for some time. Perhaps the provisions of this bill could provide a start to sorting things out. Thank you for your consideration.


Bonnie Palecek

March 12, 2007

Mark Fox

From: Engen, Steven R. [sengen@state.nd.us]
To: Mark Fox
Cc:
Subject: RE: L.E.T.A. applicant
Attachments:

Sent: Mon 9/26/2005 9:19 AM

Mr... Fox.

I have reviewed your e-mail and at this time the class is full does not allow for any additional students. The reason that your student was not given consideration is that the primary statutory role of the DOCR is to train COUNTY correctional staff and they will get first priority in placement at the CO school. I would recommend that you request a waiver of the federal requirements as we have done that w/ county staff that are close to the one year requirement.

-----Original Message-----

From: Mark Fox [mailto:mfox@mhanation.com]
Sent: Thursday, September 22, 2005 11:09 AM
To: Engen, Steven R.
Subject: L.E.T.A. applicant

Good Morning Mr. Engen:

I appreciate the opportunity you provided to me to discuss this request by telephone earlier this morning. I will provide this summary to you for your consideration and hope that it is sufficient to support our request to have Mr. Louis Lange attend "basic correctional officer" training beginning in October.

Summary: Louis Lange began his employment with us as a corrections officer on October 28th, 2004. Louis is an experienced law enforcement (20yrs) officer and has proven himself as a valuable asset to our operations.

Pursuant to federal policy, every officer employed by us must be certified as a corrections officer at the Indian Police Academy (IPA) in New Mexico within one year of beginning employment. The training schedule is typically 8 weeks.

Unfortunately, Louis has a wife that has a serious health condition that prevents him from leaving and being away from his family for that long of a period. I have been aware of this situation since last February when we were unable to send him to IPA. It has been our alternative plan since last March to send him to the LETA training in Bismarck, have him successfully trained, and then have him qualify as an exception to the IPA requirement because of his law enforcement experience.

My assistant has been consistently calling LETA since last spring indicating our intent to send him to LETA training. We were told at that time that the schedule had not been set yet, and that we would be notified some time in September when the application procedure would be open. We did not receive a notice, but as a result of a follow-up call by my assistant we found out in September that the application process was indeed open. We immediately sent Louis's application in to LETA. A short time later we were advised that Louis would be placed on a waiting list, but that his chances of being accepted were good.

You can understand how dismayed we are now that the list remains full and that he will not be accepted.

We are rapidly approaching his annual employment date and the time by which we must train him. If Louis must wait until spring for LETA training then it will place us in a condition of non-compliance with federal regulations and I, as Administrator, will be faced with the difficult decision of letting a very good officer and employee go.

I respectfully request that his application be reconsidered and, that due to exigent circumstances, he be

accepted for training this October.

I deeply appreciate all due consideration. In fact, if necessary, our Justice Center is willing to absorb any reasonable cost relative to this training.

Thank you for your time and attention.

Respectfully yours,

Mark N. Fox, Adult Administrator.

Mark Fox

From: Kandace Eagle
To: Mark Fox
Cc:
Subject: FW: LETA Training Eligibility
Attachments:

Sent: Thu 9/14/2006 10:23 AM

From: Engen, Steven R. [mailto:sengen@nd.gov]
Sent: Thu 9/14/2006 10:14 AM
To: Kandace Eagle
Subject: RE: LETA Training Eligibility

Ms. Eagle

The North Dakota DOCR is required by N.D.C.C. 12-44.1 to provide training of County Correctional Officers in the State of North Dakota. Under that same section of century code the ND DOCR has regulatory authority over the all county facilities

Because we do not have the legal authority to train or regulatory authority to provide correctional facility rules of operation we do not train Tribal Correctional Officers.

Thanks

-----Original Message-----

From: Kandace Eagle [mailto:kandaceeagle@mhanation.com]
Sent: Wednesday, September 13, 2006 10:07 AM
To: Engen, Steven R.
Subject: LETA Training Eligibility

Mr. Engen,

Can you please give me some type of documentation stating the reason why Tribal Correctional Officers are not eligible for the L.E.T.A. Training. If you have any questions please call 627-5300, ext: 310.

Thank You,

Kandace Eagle, Gerald Tex Fox Justice Center

Rep. G. Bushing
4/2/07

MEMORANDUM

TO: Dawn Charging
FROM: Steve Kelly
DATE: April 2, 2007
RE: HB 1504

One of the arguments Sheriff Bushing has used is that HB 1504 is not needed because a Sheriff has the authority to deputize a tribal officer. Here is the law that authorizes a Sheriff in North Dakota to deputize an individual:

CHAPTER 11-15. SHERIFF.

NDCC 11-15-02. Sheriff may appoint special deputies - Compensation.

The sheriff may appoint and qualify special deputies in such numbers as are required by the conditions. Each special deputy shall receive compensation for services rendered and the same mileage allowance as regular deputies, which must be paid by the county within the limits of funds budgeted for such purpose. The sheriff shall have the sole power of appointing special deputies and may remove them at pleasure.

I have emphasized language in this law that makes the appointment of Tribal officers as deputies impractical. The first problem is that a sheriff can only appoint as "required by the conditions" which indicates that there must be special circumstances and it appears that a "deputized" tribal police officer would only be able to enforce state law when special circumstances exist. Compare this to HB 1504 where a "tribal peace officer" would always be able to enforce state law as long as he was licensed by the state law enforcement training center and there was an agreement in place with the country or municipality in which he could exercise his authority as a peace officer.

The second problem is that a sheriff is required to pay deputized officers under the law. Thus, if Sheriff Bushing deputized our tribal officers, he would have to pay them mileage and compensation for services rendered. Compare this to HB 1504 which has no requirement for compensation. In essence, the Tribe would be paying for its own tribal police officers to perform services normally rendered by the county or city.

Please let me know if I may be of further assistance.

**HOUSE VERSION
OF HOUSE BILL 1504**

1. Any tribal officer licensed in recognized as a "peace officer" under S. 12-63-01 of NDCC.
2. Allows tribal/BIA police officers that have graduated from a non-North Dakota law enforcement center to be licensed by the State law enforcement center provided they can show proficiency with ND criminal and traffic law.
3. Allows State licensed tribal/BIA police officers to act in the capacity of a state peace officer on **and off** a Reservation provided there is an agreement that authorizes the officer to act in that capacity in that jurisdiction (i.e. county, city).
4. **Does not expressly require** that a political subdivision and the Tribe enter into an agreement pursuant to S. 54-40.2 of the NDCC which has never previously been required. The publishing costs are expensive. These are local agreements and should be exempted from the requirements of 54-40.2 although it does appear that they would be exempt presently.
5. Allows a tribal officer to obtain license from the State law enforcement training center **upon employment by the Tribe.**

**SENATE VERSION
OF HOUSE BILL 1504**

1. No recognition of tribal officer as a peace officer under the code which appears to be necessary.
2. Does not address licensure of non-North Dakota law enforcement center graduates.
3. Only allows State licensed police officers to act in the capacity of a state peace officer **on** Reservation provided there is an agreement that authorizes the officer to act in that capacity in that jurisdiction (i.e. county, city).
4. **Specifically requires** that Tribes and county/city enter into an agreement pursuant to S. 54-40.2.
5. Requires that a tribal officer be employed by the tribe and **an MOA with a county or municipality be in place prior to** being eligible to obtain a license from law enforcement training center. (This seems discriminatory and an attempt to make it more difficult for tribal police officers to obtain state licenses.)