

Testimony of the North Dakota Private Investigative and Security Board (NDPISB)  
Senate Bills 2095 & 2096  
House Industry, Business and Labor Committee  
March 15, 2021

Chairman Lefor and members of the Committee, thank you for the opportunity to provide testimony on Senate Bills 2095 & 2096. My name is Justin Hagel and I am an attorney representing the North Dakota Private Investigative and Security Board, otherwise known as the NDPISB. On behalf of the NDPISB, my public testimony today is to advocate a “Do Pass” as to both Senate Bills 2095 and 2096. I also hope to address any questions the Committee has on the bill.

### **COMMENTS ON BILL DRAFT**

#### Senate Bill 2095

The NDPISB introduced Senate Bill 2095 to address the Board’s administrative functions. Senate Bill 2095 would amend four separate changes into North Dakota statute to address three specific topics. The first is adding a definition for “Executive Director” of the Board. The Board currently employs an Executive Director to accomplish its administrative functions including licensing and certification of instructors, armed and unarmed security providers, and armed and unarmed private investigators. However, as that position is not listed in statute, the Board may potentially be limited in assigning functions and duties of an Executive Director through its administrative rules. This issue arose in promulgating a proposed administrative rule in adopting the “Armed First Responders in Schools” program and assigning the Executive Director authority to audit and approve course curriculum. Inclusion of the definition would permit reference of the “Executive Director” position in future administrative rules and clarify the duties and responsibilities of the “Executive Director” in acting on behalf of the NDPISB.

Senate Bill 2095 also modifies Sections 43-30-10 and 43-30.10.1, N.D.C.C., to permit the Board seek administrative remedies in either a district court or administrative proceeding. These changes are specific to the injunction authority the Board may seek against an unlicensed provider operating within the State of North Dakota. This amendment is in response to recent litigation involving the NDPISB and the entity known as “Tigerswan” which the Board alleged provided unlicensed security and investigative services within the State of North Dakota. Tigerswan challenged the Board’s authority to seek an injunction in district court after the entity purported to have left the state. The district court agreed with Tigerswan and dismissed the NDPISB’s claim for relief in seeking an injunction. Based on the language of the statute, the district court also agreed with Tigerswan’s argument that if the NDPISB is not permitted to seek an injunction, it cannot file an action in North Dakota District Court but instead must proceed with an administrative action. The North Dakota Supreme Court upheld the district court’s order on appeal.

Based on the precedent set by the North Dakota Supreme Court, there is a risk that the Board would be unable to seek an injunction against a person or entity who provides unlicensed private security or private investigative services within the State of North Dakota. Under current law, the Board may only seek an injunction against an entity illegally providing unlicensed private investigative or private security services in North Dakota through a district court action. If that person or entity leaves the State of North Dakota while the matter is pending, the district court could determine no injunction is necessary as the unlicensed activity is no longer occurring within the State of North Dakota, and therefore dismiss the full enforcement action by the Board. Subsequently, that same violator could reenter North Dakota and again provide services requiring the process begin anew with another enforcement action commenced in district court.

To prevent this problem, Senate Bill 2095 would make clear the Board has authority to seek an injunction and impose administrative fees in either district court or through an administrative action. This change would permit any enforcement action to continue regardless of the venue in which it is brought and regardless of whether the alleged violator has ceased operation in the State of North Dakota or moved outside the jurisdiction of North Dakota.

The final change in Senate Bill 2095 concerns Section 43-30-16, which is the statutory fee authority of the NDPI SB. The Board proposes amending from twenty-five dollars (\$25.00) to thirty dollars (\$30.00) the annual fees for armed certificate holders and for initial and renewal registrations for private investigative and private security services.

As the Committee is likely aware, the Board does not receive annual appropriations to fund its operations. All funding is derived from the licensing and certification fees the Board assesses. The Board experienced out-of-ordinary legal and investigative expenses directly related to the Dakota Access Pipeline protests and investigation of unlicensed activities of private investigative and private security providers. These actions resulted in referrals for criminal prosecution, and the initiation of administrative actions and litigation against unlicensed providers.

This amendment reflects the increased costs of administrating the licensing and certification of private investigative and private security providers and the increased number of enforcement actions undertaken by the Board. Senate Bill 2095 would help address those costs and support continued Board administrative functions.

### Senate Bill 2096

Perhaps the most important aspect to raise with Senate Bill 2096 is that the North Dakota House chamber has previously passed this language in the form of an amended House Bill 1463. As introduced by Representative Heinert, House Bill 1463 referenced the “Armed First Responder in Schools” program as a training requirement for emergency personnel. At the NDPI SB’s request, the language in Senate Bill 2096 was included in the House Bill 1463 mark up, and ultimately passed this chamber. While previously passed, the NDPI SB still urges

a “Do Pass” recommendation on Senate Bill 2096 as a standalone measure outside of House Bill 1463, as it addresses prior problems in the “Armed First Responder in Schools” program.

Substantively, Senate Bill 2096 is in response to NDPSIB’s prior rulemaking. The NDPSIB attempted to introduce administrative rules in compliance with House Bill 1332 enacted during the last legislative session which created the “Armed First Responders in Schools” program. As part of House Bill 1332, it gave the NDPSIB authority to create an equivalent armed first responder program to the South Dakota Sentinel program which provides training and certification of armed first responders in schools.

Upon submission of the proposed administrative rules, the NDPSIB determined that House Bill 1332 did not provide authority for the NDPSIB to certify or license course instructors for the program, did not provide authority for the NDPSIB to assess an administrative fee to defray costs for the program, did not grant the NDPSIB the power to audit any course, and potentially limited the approved course curriculum.

The NDPSIB introduced Senate Bill 2096 in an effort to correct these deficiencies. Senate Bill 2096 specifically grants the NDPSIB the authority to certify course instructors teaching the “Armed First Responders in Schools” program. As part of that program, the NDPSIB would be allowed to assess no more than \$400 for certification of a course instructor, and no more than \$300 for recertification of a course instructor. The NDPSIB would be able to audit courses to ensure compliance with the course curriculum.

In addition, House Bill 1332, as drafted and enacted into law, required the NDPSIB to create a course program equivalent to the August 1, 2019 South Dakota Sentinel program. This restriction could be interpreted to require a static version of the curriculum based on courses provided in the South Dakota Sentinel program as of August 1, 2019 without any variation permitted. Senate Bill 2096 addresses that concern by still requiring a course equivalent to the South Dakota program, but not fixed in time and avoiding any possible adverse consequences resulting therefrom.

The NDPSIB reiterates its “Do Pass” recommendations for both bills, and appreciates the Committee’s time and attention in considering these matters. I am available for any questions the Committee may have.

Justin Hagel,

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