



BURLEIGH COUNTY SHERIFF'S DEPARTMENT

KELLY LEBEN
SHERIFF

Testimony Prepared for the

House Judiciary Committee

February 14, 2021

By: Kelly Leben, Sheriff

RE: Testimony in Opposition to House Bill 1340 – Law Enforcement Entry onto Private Lands

My name is Kelly Leben and I currently serve as the elected Sheriff of Burleigh County. I testify today in opposition of House Bill 1340. HB 1340 adds language to North Dakota Century Code (NDCC) that will restrict law enforcement from entering private lands without permission unless certain exemptions are met. I believe this bill is unnecessary with deference to the 4th Amendment to the United States Constitution, case law, and established law enforcement practices.

As I reviewed HB 1340, I did so with the mindset that the intent of the bill is to protect citizens from unwarranted governmental intrusions onto their private property. Unfortunately, I believe this bill goes far beyond that and is full of unintended consequences. The first concern I have is that the bill relies on the definition of a Law Enforcement Officer found in NDCC 12.1-01-04. That definition and the language of this bill do not differentiate between on duty and off duty conduct and holds law enforcement officers to the same standard for both. The language of this bill would prevent me and our deputies from buying groceries, filling gas, or getting something to eat, both on and off duty, without first getting permission from the business owner to enter onto their private property. Actions such as routine patrolling in certain areas of Burleigh County would be prohibited as the land is private, but open to the public. These areas include the University of Mary, the Girl Scout Camp, Eagles Park, and the Dakota Adventist Academy just to name a few. In addition, there are many actions law enforcement officers take in the course of their duties that are not enforcement driven that would be restricted by the language of this bill. Actions such as death notifications, civil process service, warrant service, neighborhood canvasses, and security checks of closed businesses to prevent and detect burglaries could not be performed without first obtaining permission from the land owner prior to entering onto their property. Lastly, as an elected law enforcement officer, I relied heavily on the important task of door to door campaigning to help connect with the voters of Burleigh County. This bill would prevent all law enforcement officers campaigning to be sheriff from going door to door uninvited as part of their campaign.

ERTHOUSE

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As an elected law enforcement officer, I can assure you I am very supportive of the rights of citizens to be protected from unwarranted governmental intrusions. We spend great effort in teaching our deputies the importance of the 4th Amendment to the United States Constitution and the exceptions and exemptions to the amendment as established by the Supreme Court of the United States and the state of North Dakota. Because of the clearly established guidance provided by that case law, I believe this bill would create too many unintended consequences and would not be good for the citizens of North Dakota.

Thank you for your time and consideration and please feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelly Leben", followed by a long horizontal flourish.

Kelly Leben, Sheriff
Burleigh County