

2019 HOUSE JUDICIARY

HB 1080

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1080
1/8/2019
30545

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

A BILL relating to criminal history background checks for contract employees of the information technology department.

Minutes:

1

Chairman K. Koppelman: Opening the hearing on HB 1080.

Shelly Miller, HR Director, ITD: {Attachment #1) Read the testimony. (:48-2:50)

Rep. Rick Becker: Does the CIO have the ability to require those background checks now if desired?

Shelly Miller: The CIO has the ability to do background checks on employees and contractors that are working on IT projects, but not necessarily contractors that may be there to do repairs and cleaning and food delivery.

Rep. Rick Becker: This bill would require that the CIO get background checks on those individuals?

Shelly Miller: In the past we thought we had the ability to do that, but when the FBI conducted their review they said the current legislation could be construed to only allow contracts who are working on an IT project.

Rep. Rick Becker: It is the FBI reading our statute and the language that says shall require then it is not permitted. Is that typical?

Shelly Miller: I cannot answer that. FBI did an audit with BCI and then they contacted us to that affect. We are just trying to clarify that.

Rep. McWilliams: If we have a backed up toilet and we need to get a plumber into the building would that plumber then be required to have a background check?

Shelly Miller: We have plumbers that come in typically and service the building; however, if it is backed up they would have to be escorted.

Rep. Paur: Would the intern print up NDCC 54-59-20 and give it out.

Chairman K. Koppelman: The code that this bill that it chose to amend is the section that deals with a condition of employment and that is a shall require under current law. We are moving the requirement for a criminal background check into a mandatory area that now is only reserved for employees.

Shelly Miller: Some of the contractors may have excess to a system, but not necessarily have excess to HIPA data etc. so then you cannot require criminal background checks if you do not have excess. Any contractor who does enter our facility on a regular basis we definitely want to have a criminal background check done.

Chairman K. Koppelman: I would suggest rather than amending this section as the bill does maybe we should just remove the language on lines 14 and 15. Then the CIO could reside on a case by case basis when contractors are being procedure.

Representative Jones: The sheer number we are talking about here are a lot of providers. Has anyone checked the numbers we are talking about?

Shelly Miller: We currently contract called Food to Go and they have three employees that service our building. There are more people in the cleaning crew and you are looking at about ten to twelve people there.

Representative Jones: How much does that change yearly?

Shelly Miller: We have had the same crew for years, but they have employees that come and go so maybe it is six people.

Representative Jones: Are you currently getting background checks on all those people?

Shelly Miller: We still conduct the background checks but BCI is making the determination based on their criteria.

Chairman K. Koppelman: Did your department talk to BCI about background checks. There is a concern about the cost and value factors. If the Attorney General's office has to employee more people just to keep with all the background checks that becomes an issue.

Shelly Miller: We coordinate all the checks and BCI brought it to our attention. They brought this bill to our attention that it needed a change.

Rep. McWilliams: What kind of background checks to you need for people bringing food to the cafeteria?

Shelly Miller: It should be relating to what their job is.

Rep. McWilliams: Is there a statute of limitation?

Shelly Miller: We do look at the degree and number of charges.

Dan Sips, Chief Operating Officer, ITD: The background checks we do we use their data for the background checks and they want to make sure we have the authority to use that. They want us to be careful. We are not sure we have the authority clarified in our laws.

Chairman K. Koppelman: The FBI was concerned we were doing too many background checks?

Dan Sips: Yes that is correct. We need to have the same data as they have and we are following those standards.

Chairman K. Koppelman: FBI was telling them that you are doing it on more people We you saying that the concern of the FBI and Ms. Miller that statute only gives authority to background checks on folks who are contracted to do IT projects or was it that you do not have the authority to do that?

Dan Sips: They felt we were doing the right thing, but they think the statute needs to be clearer.

Chairman K. Koppelman: I thought they were wanting to restrict the number of background checks being done and thought perhaps you were doing too many?

Dan Sips: I will check with them and can get back to BCI and come back to you tomorrow with this information.

Chairman K. Koppelman: So they don't want you to over step the number of background checks that you do, but they felt that they were appropriate the ones you were doing now.

Dan Sips: That is correct.

Rep. Paur: Are you saying the FBI is concerned about a state agency breaking state laws?

Dan Sips: We thought anyone that came into the building fell under our code and they said there needs to be clarity that.

Opposition: None

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1080
1/9/2019
30605

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

A BILL relating to criminal history background checks for contract employees of the information technology department.

Minutes:

1

Chairman K. Koppelman: Reopened the meeting on HB 1080.

Dan Sips, Chief Operating Officer, ITD: Discussed the proposed amendment. (Attachment #1) On line 14 it talks about with respect to information technology project and we thought about removing that language. The Attorney General thought that would be way too broad so here is my proposed amendment which we would change shall to may so that still allows you to comply with the FBI requirements.

Chairman K. Koppelman: I agree. By changing the shall to may because part of the concern was mandating this and this gives some flexibility.

Rep. McWilliams: Will this change the practices of the department?

Dan Sips: It may. This gives us the judgement though.

Motion Made to amend the bill to change the word on line 8 from shall to may amendment by Rep. Hanson; Seconded by Representative Satrom:

Voice vote carried.

Do Pass As Amended Motion Made by Representative Satrom: Seconded by Rep. Hanson

Roll Call Vote: 9 Yes 5 No 0 Absent Carrier: Representative Jones:

Closed.

19.8038.01001
Title.02000

Adopted by the Judiciary Committee

DA 1/9/19

January 9, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 1, line 8, overstrike "shall" and insert immediately thereafter "may"

Renumber accordingly

Date: 1-9-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1080

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19-8032 01001.02000

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By HANSON Seconded By SATROM

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

voice
vote
carried

Date: 1-9-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1080**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.8038.01001.02000

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By SATROM Seconded By HANSON

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

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep. JONES

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

REPORT OF STANDING COMMITTEE

HB 1080: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1080 was placed on the Sixth order on the calendar.

Page 1, line 8, overstrike "shall" and insert immediately thereafter "may"

Renumber accordingly

2019 SENATE JUDICIARY

HB 1080

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1080
2/12/2019
#32554 (8:47)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 54-59-20 of the North Dakota Century Code, relating to criminal history background checks for contract employees of the information technology department.

Minutes:

1 Attachment

Chair Larson opens the hearing on HB 1080.

Shelly Miller, HR Director with ITD, testifies in favor (see attachment #1)

(4:35) Senator Osland: Isn't "may" an elective? Please explain.

Miller: Sometimes our contractors work for ITD but may not be accessing the systems or the facilities. We may not need to perform a criminal background check on them if they won't have access. It gives us the ability to make that determination.

Senator Myrdal: Was that the amendment that was changed in the House?

Miller: Correct.

Senator Bakke: Who pays for the background checks?

Miller: We do.

Senator Bakke: Should there be a fiscal note?

Miller: It's no additional cost than what we've currently been doing. It's just for those contractors that aren't working on an IT project- that we want to maintain that ability to do so. For example, people that might come in to work on the buildings such as plumbers or the cleaning crew that the landlord that has hired, it would be those. It would be nothing additional from what we're currently doing.

Senator Luick: Why wouldn't that be under administrative rule? I would think that you would have the authority to do that as you wish.

Dan Sipes, Chief Operating Officer at ITD

Sipes: I believe the reason it's in Century Code is we need to specifically, legally be granted the authority to do those background checks. This would be a big deal particularly on the CJIS (Criminal Justice Information System) side of things.

Senator Myrdal: Moves for a Do Pass.

Senator Bakke: Seconds.

A Roll Call Vote was Taken: 6 yeas, 0 nays, 0 absent. Motion passes.

Chair Larson will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1080**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Bakke

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

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chair Larson

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

REPORT OF STANDING COMMITTEE

HB 1080, as engrossed: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1080 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1080

AK
HB1080
1-8-19
P.1

HB 1080 TESTIMONY
HOUSE JUDICIARY COMMITTEE
BY: SHELLY MILLER, HR DIRECTOR
INFORMATION TECHNOLOGY DEPARTMENT (ITD)
JANUARY 8, 2019

Mr. Chairman and members of the committee, my name is Shelly Miller. I am the HR Director with the Information Technology Department (ITD). I am here to express ITD support for House Bill 1080.

This bill clarifies the language in NDCC 54-59-20 to allow ITD to perform background checks on contractors and subcontractors who might have unescorted physical access to facilities of ITD or other security-sensitive areas supported by ITD.

ITD coordinates with the North Dakota Bureau of Criminal Investigation (BCI) on our background checks. The Federal Bureau of Investigation (FBI) conducts periodic reviews of the BCI background check process and the associated legislation. During the last review the FBI indicated they would prefer a clarification to our legislation to more clearly define that any contractor who contracts with ITD would be required to have a BCI criminal background check if they will have unescorted physical access to ITD facilities or other security-sensitive areas.

The current language could be construed to only allow the background checks if they are working on an information technology project. ITD supports systems that host Criminal Justice Information Services (CJIS) data, HIPPA data, and other types of personally identifiable information. There are state and federal requirements regarding personnel who may be granted access to systems or facilities that store or process this type of data. This is the reason that we require our employees and contractors to undergo criminal background checks before being granted any logical access to systems or physical access to facilities.

This concludes my remarks. I would be happy to answer any questions.

Shelly Miller
Human Resource Director
Information Technology Department
(701) 328-2656
Shmiller@nd.gov

#1
HB1080
1-9-19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1080

Page 1, line 8, overstrike "shall" and insert immediately thereafter "may"

Renumber accordingly

#1
HB 1080
2-12-19

HB 1080 TESTIMONY
HOUSE JUDICIARY COMMITTEE
BY: SHELLY MILLER, HR DIRECTOR
INFORMATION TECHNOLOGY DEPARTMENT (ITD)
FEBRUARY 12, 2019

Madam Chairman and members of the committee, my name is Shelly Miller. I am the HR Director with the Information Technology Department (ITD). I am here to express ITD support for House Bill 1080.

This bill clarifies the language in NDCC 54-59-20 to allow ITD to continue to perform background checks on contractors and subcontractors who might have unescorted physical access to facilities of ITD or other security-sensitive areas supported by ITD.

ITD coordinates with the North Dakota Bureau of Criminal Investigation (BCI) on our background checks. The Federal Bureau of Investigation (FBI) conducts periodic reviews of the BCI background check process and the associated legislation. During the last review the FBI indicated they would prefer a clarification to our legislation to more clearly define that any contractor who contracts with ITD would be required to have a BCI criminal background check if they will have unescorted physical access to ITD facilities or other security-sensitive areas.

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This concludes my remarks. I would be happy to answer any questions.

Shelly Miller
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