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10/2/03
Date

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1177

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1177

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 1-17-03

Tape Number	Side A	Side B	Meter #
2	x		54.4-end

Committee Clerk Signature *Opal Runk*

Minutes: Chairman Klein: called the hearing to order on HB 1177.

13 members present 1 Absent (Tieman)

Col. Jerald Engelman, N.D. National Guard: appeared in favor of the bill. **(SEE ATTACHED TESTIMONY)**. He also presented a House Resolution #3005.

Col. Al Dohrmann, N.D. National Guard: appeared in favor of the bill and presented slight testimony. (NORTH DAKOTA CONSTITUTION ARTICLE)

Col. Jerald Engelman, N.D. National Guard: stated that there have been no changes (house-keeping) since the 1940's.

Chairman Klein: asked if "state defense force" is this new language? And does it fit with most other states that have done this?

Col. Jerald Engelman: Yes, it is new language and new definition, some states use that language some states use other types of language, we use that language because it fits well with the language that is already in the constitution.

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Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1177

Hearing Date 1-17-03

Chairman Klein: has a question on page, 2 line 22, are you referring to Army, Navy, Air Force, Marine, Coast Guard units?

Col. Engelman: We do not have any Marine, Coast Guard units in the National Guard, we are soon to receive a reserve Marine unit in Wahpeton. The only service related entities are Army, and Air Force.

Representative Devlin: It appears your putting the cart before the horse. I'm reluctant to approve a bill that has no meaning at all unless the constitutional measure passes by the state of N.D.

Col. Engelman: Our view point on that it would give us a opportunity at the next legislative session to go through and do other house cleaning measures necessary and a summative at the next legislative session.

Representative Klemin: Why do we need to change the constitution in order to make the changes to this bill?

Col. Engelman: I suppose attorneys could debate that all day long, I don't think if we did the statutes, that it would be in violation of the constitution. We would be subject to challenge.

Representative Haas: Made a motion to **DO NOT PASS**

Representative Kasper: **SECOND** the motion.

VOTE 14 YES 0 NO 0 Absent

Representative Devlin: will carry the bill to the floor.

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1/21/03
Date

FISCAL NOTE
Requested by Legislative Council
01/03/2003

Bill/Resolution No.: HB 1177

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This Bill updates out-of-date language and provisions within Chapter 37. It has no fiscal impact on the budget.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Alan S. Dohrmann	Agency:	Adjutant General's Office
Phone Number:	701-333-2009	Date Prepared:	01/04/2003

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10/2/03
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Date: 1-23-03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1177

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DNP

Motion Made By Rep. Haas Seconded By Rep. Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amerman	X	
Vice Chairman B.B. Grande	X		L. Potter	X	
W.R. Devlin	X		C. Williams	X	
C.B. Haas	X		L. Winrich	X	
J. Kasper	X				
L.R. Klemin	X				
L. Meier	X				
M. Sitte	X				
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Devlin

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

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10/2/03
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REPORT OF STANDING COMMITTEE (410)
January 23, 2003 11:55 a.m.

Module No: HR-13-0955
Carrier: Devlin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1177: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1177 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-13-0955

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2003 TESTIMONY

HB 1177

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10/2/03
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Minutes
for
Prory
11/17/77

Section 9. All impeachments shall be tried by the senate. When sitting for that purpose senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial, the presiding judge of the supreme court shall preside.

Section 10. The governor and other state and judicial officers, except county judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crime, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Section 11. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

Section 12. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

Section 13. On trial of impeachment against the governor, the lieutenant governor shall not sit as a member of the court.

Section 14. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

Section 15. No person shall be liable to impeachment twice for the same offense.

Section 16. The militia of this state shall consist of all able-bodied male persons residing in this state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this state. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for personal service.

Section 17. The militia shall be enrolled, organized, uniformed, armed and disciplined in such manner as shall be provided by law, not incompatible with the constitution or laws of the United States.

Section 18. The legislative assembly shall provide by law for the establishment of voluntary organizations of the several arms of the service, which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this state except the army of the United States, without the proclamation of the governor of the state.

Section 19. All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide.

Section 20. The commissioned officers of the militia shall be commissioned by the governor and no commissioned officer shall be removed from office except by sentence of court-martial pursuant to law.

Section 21. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and going to and returning from the same.

Section 22. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws, exempting from forced sale to all heads of families a homestead, the value of which shall be limited and defined by law; and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens against homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law.

Section 23. The real and personal property of any woman in this state, acquired before marriage, and all property to which she may, after marriage become in any manner rightfully entitled shall be her separate property, and shall not be liable for the debts of her husband.

North Dakota Constitution Article V, § 7 (2002)

The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in this article.

The governor may call special sessions of the legislative assembly.

The governor shall present information on the condition of the state, together with any recommended legislation, to every regular and special session of the legislative assembly.

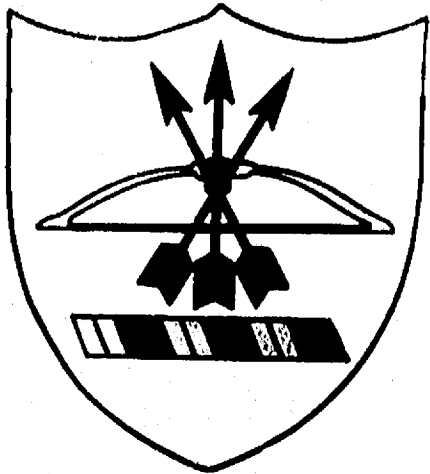
The governor shall transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state.

The governor may grant reprieves, commutations, and pardons. The governor may delegate this power in a manner provided by law.

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10/2/03
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Army National Guard
"The Straight Arrows"



Air National Guard
"The Happy Hooligans"

The
North Dakota
National Guard

Testimony of
Colonel Jerald Engelman
before the
Government and Veterans Affairs Committee
January 17, 2003
8:30 a.m.
HOUSE BILL 1177

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TESTIMONY OF
COL. JERALD ENGELMAN, THE DEPUTY ADJUTANT GENERAL
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

January 17, 2003

8:30 a.m.

HOUSE BILL 1177

Mr. Chairman, Members of the Committee, good morning.

This Bill is a companion measure to House Concurrent Resolution 3005, which proposes to amend our Constitution to bring it in line with the reality of membership in a modern military. Our Constitution and Chapter 37 of the North Dakota Century Code, as currently written, limits membership in the militia—which the National Guard is a component of—to male residents between the ages of 18 and 45. As one Federal Circuit Court has already ruled, this violates a provision of the United States Constitution that forbids restrictions on cross-border employment. While we do not restrict membership in the National Guard based on these outdated provisions, we feel it is important to bring our membership practices and State law in accord, rather than simply ignoring State law.

Due to these problems with our Constitution, we have been hesitant to do routine housekeeping of Chapter 37. This Chapter, like the military provisions of our Constitution, contain many outdated provisions. These range from minor grammatical problems and gender specific language, to sections that are in violation of the fundamental rights of individuals. For example, Section 37-02-01 limits military service to male residents between the ages of 18 and 45; Section 37-07-02 makes a limited exception for females, but only allows them to serve in the "medical corps, nurses corps, and other noncombatant branches". Both of these sections of law made sense at the time they were drafted; however, with new career fields opening up for female members of the National Guard, and the total integration of the Army and Air National Guard into the "One Army" and "One Air Force" concept, it is important that our State's laws mirror Federal law when it comes to membership in the military forces.

This Bill also removes the term "militia" from the laws of this state. While this term has historical significance, it has, over the years, come to be associated with non-government organizations. While the term "militia" is used numerous times in the Century Code, the two military organizations available to the Governor are the National Guard, which under current law is the active component of the militia, and the State Defense Force, which would be composed of

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reserve members of the State's military. As such, the term militia is at best redundant, and, at worst, confusing. It is because of this potential for confusion, and, in part, the negative connotations that the word "militia" has taken on over the past twenty years, that we believe the time has come to remove this term from our law. Changing to the term "military forces" also makes our statutes consistent with the Executive branch section of our Constitution which makes the Governor the Commander in Chief of the "state's military forces". N.D. Const. Art. V, Section 7 (2001) [Amended in 1997].

I would like to stress that this Bill only becomes effective if and when the proposed House Current Resolution 3005 passes both bodies of this Assembly, and is approved by the qualified electors of this state. Assuming this Resolution passes both houses of this Assembly and is approved by the citizens of North Dakota, this Bill would become effective on August 1, 2004.

Finally, I would like to draw your attention to Attachment 1. This attachment provides a section-by-section summary of our proposed amendments.

I would be pleased to respond to any questions, Mr. Chairman.

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Section-by-Section Summary of Amendments

Section 1-Definitions:

- Replaces "militia" with "military forces"
- Deletes the definitions of "Battalion", "Company", "Defense department", "Militia" and "Reserve Militia". Federal regulations define battalion, company and Defense Department. Militia and reserve militia are removed and replaced with the definitions of "active military forces" in subsection 1 and "state defense force" in subsection 9. Finally, we add a definition of "State active duty" to clarify when duty is performed at state expense. *new language*

Section 2-Governor's authority to order out National Guard—State defense force ordered out.

- Replaces "reserve militia" with "State defense force".

Section 3-Service medals.

- Corrects gender specific language.

Section 4-Members of active military forces exempt from civil process.

- Replaces "militia" with "military forces".
- Corrects gender specific language.

Section 5-When members of military forces exempt from civil or criminal liability.

- Replaces "militia" with "military forces".
- Corrects gender specific language.

Section 6-Military parades by certain bodies prohibit—Exception.

- Removes unneeded language (specified events in which veterans could march with firearms).
- Removes penalty for violation of statute.

Section 7-Pay of officers and enlisted members assigned to special duty.

- Corrects gender specific language.

Section 8-Failure of member of the military forces to appear-Penalty.

- Replaces "militia" with "military forces".
- Corrects gender specific language.

Attachment 1

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Section 9-Incurring expenses by officers of military forces-Auditing and payment of accounts.

- Replaces "militia" with "military forces".
- Corrects gender specific language.
- Removes the obsolete term "paymaster general of the state".

Section 10-Military forces-How constituted-Exception.

- Adds categories of potential military forces of this state—"and those residents and nonresidents who are accepted into the military service of this state". This allows non-residents, females and persons over 45 years of age to serve in the National Guard or State Defense Force.

Section 11-North Dakota National Guard-Composition.

- Removes obsolete language that restricted career fields for female members of the National Guard.
- Removes gender specific language.

Section 12-Governor to be commander in chief of military forces.

- Replaces "militia" with "military forces".
- Removes unneeded language.

Section 13-General Duties of Adjutant General.

- Replaces "militia and national guard" with "military forces".

Section 14-Military property-Issuance-Purchase.

- Replaces "reserve militia" with "state military forces".

Section 15-Compilation of military law by adjutant general-Distribution-Textbooks and reports issued.

- Replaces "militia" with "military forces".

Section 16-Commissioned officer of national guard to be examined.

- Removes unneeded language (We have no choice but to follow federal law on the examination of officers).

Section 17-Responsibility for efficiency.

- Corrects gender specific language.

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Section 18-Expenses allowed officers and enlisted members of national guard.

- Corrects gender specific language.

Section 19-Original enlistments in national guard.

- Corrects gender specific language.
- Removes limit on term of enlistment. The Federal rules on minimum terms of enlistment could change. If the Federal Government authorizes a shorter term of enlistment, we should also be capable of offering shorter terms under State law.

Section 20-Enlisted members to sign contract of enlistment and subscribe to oath.

- Corrects gender specific language.
- Gives the adjutant general the authority to specify the enlistment oath, consistent with Federal regulations. Specifying the oath could lead to a problem if the Federal government changes its oath.

Section 21-Transfer of enlisted members.

- Removes confusing language ("removing from one location to another").
- Corrects gender specific language.

Section 22-Pay and allowances of enlisted members-Deductions allowed.

- Corrects gender specific language.
- Removes references to company and battalion.
- Specifies that this pay scale only applies in state active duty.

Section 23-Discharge of enlisted members.

- Corrects gender specific language.

Section 24-Transfer from active to reserve list and from reserve to active list.

- Corrects gender specific language.

Section 25-Method of drafting reserves for service.

- Removes the term "militia".

Section 26-Members of military forces and dependents may be given pensions.

- Replaces terms "national guard" and "militia" with "military forces".

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Section 27-Compensation for disability or death.

-Replaces terms "national guard" and "militia" with "military forces".

Section 28-Effective date.

-Ties this to Constitutional Amendment (House Concurrent Resolution 3005) and provides an effective date after the electors of the state have a chance to vote on a Constitutional Amendment. As indicated, this Bill only becomes law if the qualified electors of this state approve the Constitutional Amendment.

Attachment 1

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38077.0100

Fifty-eighth
Legislative Assembly
of North Dakota

HOUSE CONCURRENT RESOLUTION NO. 3005

Introduced by

Representatives Belter, Kretschmar, Martinson

Senators Mathem, Traynor, Wardner

(At the request of the Adjutant General)

HB 1177

- 1 A concurrent resolution for the amendment of section 17 of article XI of the Constitution of
2 North Dakota, relating to the organization of the state's military forces; to repeal sections 16, 18,
3 19, 20, and 21 of article XI of the Constitution of North Dakota, relating to the organization,
4 membership requirements, and appointment of officers of the state's militia and privilege from
5 arrest during periods of military service; and to provide an effective date.

6 **STATEMENT OF INTENT**

- 7 The amendment of section 17 and the repeal of sections 16, 18, 19, 20, and 21 of article XI of
8 the Constitution of North Dakota removes obsolete language relating to age, gender, and
9 residency requirements for membership in the military forces of the state and provides the
10 legislative assembly with authority to organize the military forces of this state and appoint
11 officers in accordance with federal law.

- 12 **BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE**
13 **SENATE CONCURRING THEREIN:**

- 14 That the following proposed amendment to section 17 and the proposed repeal of
15 sections 16, 18, 19, 20, and 21 of article XI of the Constitution of North Dakota are agreed to
16 and must be submitted to the qualified electors of North Dakota at the primary election to be
17 held in 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

- 18 **SECTION 1. AMENDMENT.** Section 17 of article XI of the Constitution of North
19 Dakota is amended and reenacted as follows:

- 20 **Section 17.** ~~The militia shall~~ military forces of this state must be enrolled, organized,
21 uniformed, armed, and disciplined in ~~such a manner as shall be~~ provided by law, ~~not~~
22 ~~incompatible and compatible~~ with the constitution or laws of the United States.

- 23 **SECTION 2. REPEAL.** Sections 16, 18, 19, 20, and 21 of article XI of the Constitution
24 of North Dakota are repealed.

Fifty-eighth
Legislative Assembly

1 **SECTION 3. EFFECTIVE DATE.** If approved by the voters, this measure becomes
2 effective on August 1, 2004.

Page No. 2

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