

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

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Deanna Hallen
Operator's Signature

10/22/03

Date

2003 SENATE POLITICAL SUBDIVISIONS

SB 2346

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2346

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 6, 2003

Tape Number	Side A	Side B	Meter #
1	X		5425 - End
		X	0 - 1979
Committee Clerk Signature <i>Shirley Long</i>			

Minutes:

CHAIRMAN COOK opened the hearing on SB 2346. All senators (6) present.

SB 2346 is relating to membership on the peace officers standards and training board, temporary suspensions and cost of prosecution.

Sandy Tabor Deputy Attorney General appeared in support of SB 2346. (See attached testimony)

She passed out proposed amendments (See attached)

Richard Benesh, Morton County Commissioner and Chairman of ND Peace Officers Training and Standards appeared in support of SB 2346 as amended. We need the changes in this current law. Many times we have been hampered and unable to go as far as we needed to on an issue because our budget is very limited (licensing fees \$5.00 per officer) The amendments on line eighteen as presented gives back staffing to the attorney general which allows us to be able to continue to function as POST Board members. The primary responsibility of POST members is

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Senate Political Subdivisions Committee

Bill/Resolution Number SB 2346

Hearing Date: February 6, 2003

to see that law enforcement officers are properly trained before we issue a license. Once we issue a license to that officer, the members of the POST Board are taking a responsibility and need to feel comfortable. Training is critical. POST Board members need the ability to suspend a license when needed.

Bryce Hill, President of ND League of Cities and Bismarck City Commissioner holding the Police portfolio spoke in support of SB 2346. This bill will help us get through the next two years. One of the things that we have is a senate concurrent resolution to do a study of all law enforcement for the coming biennium. Through this study we hope that we will be able to look at all the training in the state. The second part of it is to find a funding source that we can count on year after year. We hope that you will support this concurrent resolution to do this study because it is very important.

No opposition to SB 2346.

CHAIRMAN COOK closed the hearing on SB 2346.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2346

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date: February 13, 2003 (Discussion and Action)

Tape Number	Side A	Side B	Meter #
1		X	5425 - End
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK called the meeting to order. All members (6) in attendance.

CHAIRMAN COOK reviewed amendments prepared by the Office of the Attorney General with committee.

SENATOR JUDY LEE moved the adoption of amendments to SB 2346

SENATOR SYVERSON seconded the motion

Roll Call Vote: Yes 6 No 0 Absent 0

SENATOR JUDY LEE moved a **DO PASS AS AMENDED ON SB 2346**

SENATOR POLOVITZ seconded the motion

Roll call vote: Yes 6 No 0 Absent 0

Carrier: **SENATOR JUDY LEE**

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FISCAL NOTE
Requested by Legislative Council
02/20/2003

Amendment to: SB 2346

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.

As amended, this bill does not cause a fiscal impact on our office when compared to current state statute. However, the Governor's Executive Recommendation does not include funding for two training officers and associated operating costs. This will adversely affect our ability to fulfill these duties unless the cuts are reinstated.

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.

Not applicable

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.

As amended, this bill does not cause a fiscal impact to our office when compared to current state statute. However, the Executive Recommendation does not include funding for two training officers and associated operating costs. This will adversely affect our ability to fulfill these duties unless the reductions are reinstated.

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.

As amended, this bill does not cause a fiscal impact to our office when compared to current state statute. However, the Executive Recommendation does not include funding for two training officers and associated operating costs. This will adversely affect our ability to fulfill these duties unless the reductions are reinstated.

Name:	Jerry Kemmet/Kathy Roll	Agency:	Office of Attorney General
Phone Number:	701-328-5500/328-3622	Date Prepared:	02/20/2003

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FISCAL NOTE
Requested by Legislative Council
01/28/2003

Bill/Resolution No.: SB 2346

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 does not cause a fiscal impact on our office when compared to current state statute. However, the Governor's Executive Recommendation does not include funding for two training officers and associated operating costs. This will adversely affect our ability to fulfill these duties unless the cuts are reinstated.

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.

Not applicable

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.

This bill does not cause a fiscal impact to our office when compared to current state statute. However, the Executive Recommendation does not include funding for two training officers and associated operating costs. This will adversely affect our ability to fulfill these duties unless the reductions are reinstated.

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.

This bill does not cause a fiscal impact to our office when compared to current state statute. However, the Executive Recommendation does not include funding for two training officers and associated operating costs. This will adversely affect our ability to fulfill these duties unless the reductions are reinstated.

Name:	Jerry Kemmet/Kathy Roll	Agency:	Office of Attorney General
Phone Number:	701-328-5500/328-3622	Date Prepared:	01/29/2003

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38369.0101
Title.0200

Adopted by the Political Subdivisions
Committee

February 14, 2003

JS
2-14-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2346

Page 1, line 6, remove the third "and"

Page 1, line 8, after "training" insert "; and to declare an emergency"

Page 2, line 2, overstrike "sheriffs, police departments,"

Page 2, line 3, overstrike "state's attorneys" and insert immediately thereafter "criminal justice agencies"

Page 4, line 5, remove the overstrike over "~~Division means the~~", after "division" insert "training section of the bureau of criminal investigation", and remove the overstrike over the second overstruck period

Page 4, line 6, after "4." insert "3."

Page 4, line 16, replace "A" with "With the exception of the county government representative, the city government representative, and the director of the law enforcement training center, a"

Page 4, line 18, after "board" insert ", including an employee to serve as the secretary of the board and as an ex officio nonvoting member of the board"

Page 9, after line 4, insert:

"SECTION 18. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Page No. 1

38369.0101

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10/22/03

Date

Date: 2-13-02
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2346- DOPASS on Amendment

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38369.0101

Action Taken Adopt Amendments

Motion Made By Senator Judy Lee Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator John O. Syverson, V C	X				
Senator Gary A. Lee	X				
Senator Judy Lee	X				
Senator Linda Christenson	X				
Senator Michael Polovitz	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

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10/22/03
Date

Date: 2-13-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2346 Do Pass as Amended

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Senator J. Lee Seconded By Senator Syverson

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator John O. Syverson, V C	X				
Senator Gary A. Lee	X				
Senator Judy Lee	X				
Senator Linda Christenson	X				
Senator Michael Polovitz	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Judy Lee

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

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10/22/03
Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 3:06 p.m.

Module No: SR-30-2958
Carrier: J. Lee
Insert LC: 38369.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2346: Political Subdivisions Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2346 was placed on the Sixth order on the calendar.

Page 1, line 6, remove the third "and"

Page 1, line 8, after "training" insert "; and to declare an emergency"

Page 2, line 2, overstrike "sheriffs, police departments,"

Page 2, line 3, overstrike "state's attorneys" and insert immediately thereafter "criminal justice agencies"

Page 4, line 5, remove the overstrike over "~~Division means the~~", after "~~division~~" insert "training section of the bureau of criminal investigation", and remove the overstrike over the second overstruck period

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Page 4, line 18, after "board" insert ", including an employee to serve as the secretary of the board and as an ex officio nonvoting member of the board"

Page 9, after line 4, insert:

"SECTION 18. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2003 HOUSE POLITICAL SUBDIVISIONS

SB 2346

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2346

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date: March 14, 2003

Tape Number	Side A	Side B	Meter #
1	X		41.4-53.3
1		X	4.0-32.9
Committee Clerk Signature <i>Mickie Schmidt</i> 4-10-03			

Minutes:

TAPE 1: SIDE A:

(41.4) CHAIRMAN GLEN FROSETH: We will open the hearing on SB 2346.

(41.5) SANDY TABOR: DEPUTY ATTORNEY GENERAL: (Testimony in support) (See attachment #1 and #2 - an amendment) (53.3)

TAPE 1: SIDE B:

(4.0) SANDY TABOR: (continued testimony)

(4.3) REP. BRUCE ECKRE: What happens to the director of law enforcement at the Training Center and has been there a long time. He's there a lot more than 6 years as a 2 year term, he can't be re-appointed then?

(4.4) SANDY TABOR: That's why we exempted him out too, he is on line 18 of the bill. In the recognition of the exact thing you pointed out. That role on the Post Board goes with the position, not the person. In the Senate, again to recognize preset practice and that's at the end of

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House Political Subdivisions Committee

Bill/Resolution Number SB 2346

Hearing Date: March 14, 2003

this section on lines 20, 21 and 22. We have always provided staff to the Post Board. One of the things that that staff person serves at is a non building exofficio member and secretary of the board, other words, that person does all of the paper work. Post Board members asked that we would qualify that just so that in these times of tightening budgets that we do recognize that.

(5.5) Section 8 and 9 are just technical changes about making reference to the chapter. Section 10 earlier I told you that some of the Post Board duties were in chapter 12-62. This is where we moved them to. So when I referring to you page 5, lines 18 and 24, heres where they ended up.

Section's 11 through 14 are just a technical change to get rid of the incorporation of the reference to the chapter. Section 15 allows the Post Board to temporarily suspend a Peace Officer's license.

This can only happen when the Peace Officer is either violated 12-63 or the Post Board rules and also it can only happen in those instances where the continuation of allowing the Peace Officer to be on the street, would put at risk a series of harm to the public and the immediate suspension of that license is reasonably necessary to protect the public from harm.(6.5) It is a very limited

scope of time when they would be able to do this temporary suspension. The person is allowed three days from the time when they issue the temporary suspension, they have to send a suspension and notice to the Peace Officer telling them they've been suspended and giving them their rights. Their main right is an appeal within 60 days. The other thing is that the Peace Officer's always in this language, given the right to appeal the temporary suspension to a court of law anytime, before the formal hearing is.

(7.8) REP. DALE SEVERSON: Who does the suspending now?

(7.9) SANDY TABOR: The suspension can occur now by the Post Board but it can't be done at it's parting?, it could only be done as part of their formal process. Right now they have to go

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House Political Subdivisions Committee
Bill/Resolution Number SB 2346
Hearing Date: March 14, 2003

through the whole formal process before they can suspend their license as part of their discipline.

What this will allow them to do is temporarily suspend it as a way to protect the public.

(8.8) REP. DALE SEVERSON: Who would bring the charges against the Officer?

(9.0) SANDY TABOR: I will defer that question to Mr. Richard Bendish. I think that the Post Board could bring on their own evolution based on information they've received from the agency, sheriff's office, or other ways that they get the information.

(9.4) REP. MARY EKSTROM: They still then have full discretion as to whether the suspension is with pay or without pay?

(9.4) SANDY TABOR: I believe so. The department that employs the person has to have some involvement because they're the ones who pay. (10.1) Section 16 deals with the process of disciplinary proceedings. This is not an unusual section of law for an administrative board to have. The Post Boards don't get much money for their licensers fees, like some other boards.

(10.7) Section 17 repeals a number of sections in chapter 12-62 that are now obsolete because of the clean up we've done. (10.9) The final thing in this bill is the Senate put on an emergency clause. That was at the request of the Attorney General in part because he's very concerned about the work load for this board and we have the ability to appoint new members and get this going.

(11.2) REP. DALE SEVERSON: Is there no appropriation on this bill that I saw and yet they're adding two new board members. Is there going to be any tax on their ????

(11.3) SANDY TABOR: The impact will be minimal and below the fiscal note.

(11.5) CHAIRMAN GLEN FROSETH: (read the fiscal note)

(11.9) SANDY TABOR: What that fiscal note is referring to is part of the crisis in reduction.

We cut the training section moneys from our office, however, in the interim we worked with

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House Political Subdivisions Committee

Bill/Resolution Number SB 2346

Hearing Date: March 14, 2003

Assoc. of Counties, League of Cities, Peace Officer's, the Chief organization and the Sheriff's organization on the plan to ensure that all officer's would do training, we would just do it differently. In addition we did make a request for 1 FTE to be restored for our budget core training. The Senate put that back into our budget. Even if we don't get that FTE, we will still work with the entities to do training, but just have to do it different.

(12.7) REP. ALON WIELAND: What does ex parte stand for?

(12.8) SANDY TABOR: It means without being involved. Other words a single hearing. If you're doing a hearing for a judge, it's usually two parties. Ex parte allows one party to go and talk to the judge or the entity without the other party being present.

(13.3) REP. MIKE GROSZ: Could you elaborate on the repealer? I understand the first one 12-62-03, but 05, 06, & 09 dealing with the States Attorney. I don't see it covered anywhere.

(13.6) SANDY TABOR: When those sections were put into the law, the organization for the States Attorneys were not formal in their functioning and they didn't have any training opportunities and this was a while ago. This criminal training division was doing that training, now the States Attorney doing their own training. We thought this would be a really simple and then when we got into those two chapters and they were such a mess.

(14.8) RICHARD BENDISH; CHAIR OF THE POST BOARD: (Testimony in support) In section 15 which is for temporary suspensions and our ability to charity some administrative costs. When we get the license fees from our enforcement officers in ND, 1600 plus officers pay \$5.00 a year for their license. We also get some money out of issuing the license. As Board members, we're sometimes reluctant to take action because of the costs of the administrative

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House Political Subdivisions Committee

Bill/Resolution Number SB 2346

Hearing Date: March 14, 2003

hearing and the costs. This bill actually allows to set some of those costs back and allow us to do our job a little bit better.

(17.6) REP. DALE SEVERSON: In regards to the passing on the costs for a hearing, there's nothing in here to say upon being found guilty.

(17.9) RICHARD BENDISH: The administrative law judge would supervise any costs. We don't have the authority to make them pay, under this bill we just have the ability to request some of those costs being reimbursed on page 9, line 6.

(19.6) REP. GIL HERBEL: How many hearings do you have?

(19.7) RICHARD BENDISH: Administrative hearings, about two or three. It varies from year to year.

(20.0) REP. WILLIAM KRETSCHMAR: If a city has a suspended police officer, does that come before this board?

(20.3) RICHARD BENDISH: That's probably how we find out if an officer has done something that the Post Board would be in charge of the violation of the standards. Independently what the city did they could suspend any way they want to. We only deal with suspending that license. We have nothing to do with the pay of the employees. Our responsibility of the Post Board is strictly the license that they carry and says that they meet the standards to enforce the laws for the state of North Dakota.

(22.5) REP. MARY EKSTROM: The reserve funds are feeling the national constraint, what kind of shape are the reserve funds in?

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House Political Subdivisions Committee

Bill/Resolution Number SB 2346

Hearing Date: March 14, 2003

(22.5) RICHARD BENDISH: Reserve funds we do not have. Our operating budget is \$25,000 a year. I'm finding our use of that money is assisting to put on training's in the State of North Dakota. Currently I'm holding a \$3,000 application for BCI for amphetamine class.

(24.5) REP. NANCY JOHNSON: In section 15 that talks about proceeding without having the party there. What actions might an officer have done that would say this is important enough for us to have this meeting and temporary ????

(25.0) RICHARD BENDISH: An officer while on patrol stops a vehicle for some unknown reason and gets involved in pulling his side arms and shooting the vehicle, while in the vehicle. Preliminary investigation tells us that there's questionable cause for whether he had cause for shooting his fire arm. The city is able to suspend him for a week to ten days from work with or without pay. It was about six months before we got that officer's weapon taken away from him. We couldn't touch his license until after the whole hearing process went through. It made some of us very nervous to realize that, we don't know why but the first time training did not work and he needed to be retrained. The end result was we did end up terminating his license because he wouldn't come up to our standards. We had an officer who lied to the board about his training saying he had completed them. It wasn't as severe and we weren't as concerned about it, but that type of ethics in reality in law enforcement is not acceptable.

(27.8) CHAIRMAN GLEN FROSETH: Are there different levels of standards that can be chosen or what are North Dakota Standards?

(28.1) RICHARD BENDISH: Are you talking about the Peace Officer's Standards, to be a licensed Peace Officer? We do have auxiliary and part time licensing. Those are not what we call our full time Peace Officer. A full time Peace Officer is required to meet basic training and also a

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House Political Subdivisions Committee

Bill/Resolution Number SB 2346

Hearing Date: March 14, 2003

course in Devils Lake that we administer. If you get into the Academy of Bismarck, you must be employed by a government agency. If a sheriff wants to hire a deputy, he hires an individual, there's a background criminal and psychological tests. We then request to put him in the first basic training academy by statute in Bismarck. We have a weaponry course, it's a great privilege, that we're responsible for. The people who teach it, we go to the people what they need to know to do their job and then we bring that back and develop that into training curriculum and teach them what they need to know. That is what you have to do for anyone to get licensed.

(30.2) CHAIRMAN GLEN FROSETH: Further testimony in support? Opposition? Seeing none, we will close the hearing on SB 2346.

(31.3) REP. WILLIAM KRETSCHMAR: I WOULD MOVE THE AMENDMENT.

(31.3) REP. ANDREW MARAGOS: I SECOND IT.

(31.4) CHAIRMAN GLEN FROSETH: Any discussion on the amendment? If not, we'll take a voice vote: 14-y; 0-n; 0-absent; Amendment carries.

(31.6) REP. ANDREW MARAGOS: I WOULD MOVE A DO PASS AS AMENDED.

(31.7) REP. DALE SEVERSON: I SECOND IT.

(31.9) CHAIRMAN GLEN FROSETH: Any further discussion? Seeing none, I will have the clerk take the Roll Call Vote: 11-y; 0-n; 3-absent; Carrier: Rep. Grosz. (32.9)

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Deanna Walcott
Operator's Signature

10/22/03
Date

Date: 3-14-03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2346

House POLITICAL SUBDIVISION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38369.0201 Title: 0300

Action Taken Do Pass As Amended

Motion Made By Rep. Maragos Seconded By Rep. Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froese	✓				
Vice-Chairman Nancy Johnson	✓				
Rep. Mike Groez	✓				
Rep. Gil Herbel	✓				
Rep. Ron Iverson	0				
Rep. William Kretschmar	✓				
Rep. Andrew Maragos	✓				
Rep. Dale Severson	✓				
Rep. Alon Wieland	0				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	0				
Rep. Carol Niemeler	✓				
Rep. Sally Sandvig	✓				
Rep. Vonnie Pietsch	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Gross

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

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Deanne Wallis 10/22/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 14, 2003 3:13 p.m.

Module No: HP-46-4852
Carrier: Groez
Insert LC: 38369.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2346, as engrossed: Political Subdivisions Committee (Rep. Froese, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2346 was placed on the Sixth order on the calendar.

Page 4, replace lines 5 and 6 with:

"3. 'Division' means the training section of the bureau of criminal investigation."

Page 4, line 7, remove "3."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HP-46-4852

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Operator's Signature

Date

2003 TESTIMONY

SB 2346

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Deanna Hallen
Operator's Signature

10/22/03

Date

Office of Attorney General

**Testimony of Sandi Tabor
February 6, 2003**

SB 2346

Senate Bill 2346 was drafted to make three simple changes to the chapter governing the operations of the peace officers training and standards (POST) board. Those changes were to 1) increase the size of the board from seven to nine members; 2) to provide the Board with the ability to do temporary suspensions; and 3) to provide a mechanism for the board to recover the costs of disciplinary proceedings. As is sometimes the case, however, simple amendments lead to revisions in chapters 12-62 and 12-63.

As overview, the POST Board is responsible for the licensure, certification, and discipline of peace officers. The Board also has responsibility for establishing continuing education requirements and for establishing professional ethical standards. Until now, the Board's responsibilities were found in both chapters 12-62 and 12-63. The following is a review of the amendments to both chapters.

Chapter 12-62 deals with the criminal justice training and statistics division of the Office of Attorney General -- a division that has not existed since 1991. Many of the duties discussed in this chapter are presently being handled by the Bureau of Criminal Investigations (BCI), a division of our office which is still in existence. Consequently, the chapter required amendments to reflect the present operations of the training component of BCI. In addition chapter 12-62 establishes the POST Board even though the POST Board has its own chapter (12-63). And finally, the chapter includes duties presently handled by the POST Board.

Section 1 -- modifies 12-62-01. This section establishes that the Office of Attorney General is responsible for training law enforcement and for collecting criminal justice statistics. Presently BCI handles these duties.

Section 2 -- modifies § 12-62-01.1. Changes to this section simply clarify that the Attorney General will be responsible for collecting statistics on criminal activity. The amendments offered by our office this morning delete reference to "sheriffs, police departments, and state's attorneys" and insert the term "criminal justice agencies" which encompasses each of these entities and is defined in § 12-60-16.1.

Section 3 -- modifies § 12-62-02. This section establishes the specific duties of the Office of Attorney General regarding law enforcement training and the comprehensive collection of statistics. Several of the duties listed under this section are duties of the POST Board and were transferred to the POST Board

chapter. This section also contained duties presently being handled by other entities, and these duties were deleted from the section.

Section 4 – modifies § 12-62-07. This section was modified to remove references to the division and place training responsibilities with the Office of Attorney General.

Section 5 – modifies § 12-62-10. This section was modified to delete a reference to the division.

Chapter 12-63 deals with peace officer standards, training and licensing. As mentioned earlier, several sections from chapter 12-62 dealing with the POST Board and its duties were transferred to this chapter. Many of the modifications to chapter 12-63, however, involve replacing the reference to "12-63-01 through 12-63-14" with "this chapter" or some variation thereof. This is a technical amendment to bring the chapter into compliance with present drafting styles used by Legislative Council.

Section 6 - modifies § 12-63-01. The definitions section of the chapter was amended to reflect the present applicable definitions. While proofing the bill, we noticed that Legislative Council had deleted pre-1999 language. Consequently, the amendments presented today correct the deleted language.

Section 7 – creates a new section. This section is the POST Board language from chapter 12-62 with some modifications. The first change involves increasing the size of the board from seven members to nine members. This change is important in light of the increasing demands placed upon the board. New language limiting the terms of POST Board members to three consecutive terms was also added. Amendments presented today exempt the director of the law enforcement training center and the members from the ND League of Cities and the Association of Counties from the term limitation. This amendment is proposed in recognition of the difficulty these entities encounter when recruiting individuals who are qualified and willing to serve on the Board. The section also provides that the Office of Attorney General will provide support staff to the board. At the request of the POST Board, the amendments presented today clarify that the staffing will include an individual who will serve as the secretary and as an ex officio, non-voting member of the board. This reflects the present practice of our office.

Sections 8 and 9 – include technical changes to refer to the "chapter" rather than "12-63-01 through 12-63-14".

Section 10 – modifies § 12-63-04. This section outlines the powers and duties of the POST Board. The amendments on page 5 (lines 13-20) are duties of the POST Board that were discussed in chapter 12-62. These duties were assigned to the criminal justice training and statistics division, but were transferred to the POST Board when the division was merged into the BCI. The section also

includes the technical changes of referring to "chapter" rather than the individual sections.

Sections 11 - 14 - were amended to change the reference to "chapter" rather than the individual sections.

Section 15 - creates a new section allowing the POST Board to temporarily suspend a peace officer's license ex parte. The suspension may occur if the board finds probable cause based on verified evidence that a) the officer has violated chapter 12-63 or a rule of the POST Board, b) continued performance of the officer would create a significant risk of serious and on-going harm to the public while a disciplinary proceeding is pending and c) immediate suspension of the officer's license is required to reasonably protect the public from harm.

The section includes several safeguards for the officer including:

- 1) Within 3 days of the suspension the board must serve the officer with a copy of the order along with a copy of the complaint and a notice of the hearing date;
- 2) The board must hold a hearing on the temporary suspension within 60 days; and
- 3) The officer may appeal the temporary decision anytime before the occurrence of the formal board hearing.

This section was included in the bill at the request of the POST Board to provide a procedure to remove an officer whose continued performance would create a significant risk of serious and on-going harm to the public. The very nature of this language indicates that the temporary suspension will have a limited, but when necessary, very important role in ensuring that the public safety is not jeopardized by an officer gone astray.

Section 16 - creates a new section allowing the POST Board to receive reimbursement of reasonable and actual costs for the disciplinary proceeding. It is not unusual for disciplinary boards to have authority to recover costs, and the Board feels it is necessary as the cost of disciplinary proceedings continues to increase.

Section 17 - repeals several sections of chapter 12-62 that were either moved to chapter 12-63 or are obsolete provisions.

And finally, the amendments distributed today include a new Section 18, which would add an emergency clause to the bill.

Proposed Amendments to Senate Bill 2346

February 6, 2003

Presented by the Office of Attorney General

Page 1, line 6, remove the third "and"

Page 1, line 8, after "training" insert "and to declare an emergency"

Page 2, line 2, remove "sheriffs, police departments,"

Page 2, line 3, remove "state's attorneys" and insert "criminal justice agencies"

Page 4, line 5, replace "~~criminal justice training and statistics division~~" with "~~training section of the bureau of criminal investigation~~"

Page 4, line 16, replace "A" with "With the exception of the county government representative, the city government representative, and the director of the law enforcement training center, a"

Page 4, line 18, after "board" insert ", including a staff person to serve as the secretary of the board and as an ex officio nonvoting member of the board"

Page 9, after line 4, insert:

"SECTION 18. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly.

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Deanna Hall
Operator's Signature

10/22/03

Date

3-1403

#1

Office of Attorney General

Testimony of Sandi Tabor
March 14, 2003

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Deanna Tabor
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10/22/03
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Section 6 - modifies § 12-63-01. The definitions section of the chapter was amended to reflect the present applicable definitions. While proofing the engrossed bill, we noticed that Legislative Council had not inserted the correct amendment. Consequently, I have distributed an amendment that in effect completely deletes the definition of "division".

Section 7 – creates a new section. This section is the POST Board language from chapter 12-62 with some modifications. The first change involves increasing the size of the board from seven members to nine members. This change is important in light of the increasing demands placed upon the board. New language limiting the terms of POST Board members to three consecutive terms was also added. Amendments adopted by the Senate exempt the director of the law enforcement training center and the members from the ND League of Cities and the Association of Counties from the term limitation. This amendment was proposed in recognition of the difficulty these entities encounter when recruiting individuals who are qualified and willing to serve on the Board. The section also provides that the Office of Attorney General will provide support staff to the board. At the request of the POST Board, another amendment adopted by the Senate clarifies that staffing will include an individual who will serve as the secretary and as an ex officio, non-voting member of the board. This reflects the present practice of our office.

Sections 8 and 9 – include technical changes to refer to the "chapter" rather than "12-63-01 through 12-63-14".

Section 10 – modifies §12-63-04. This section outlines the powers and duties of the POST Board. The amendments on page 5 (lines 18-24) are duties of the POST Board that were discussed in chapter 12-62. These duties were assigned to the criminal justice training and statistics division, but were transferred to the POST Board when the division was merged into the BCI. The section also

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And finally, the Senate added an emergency clause to the bill.

#2 - 3-14-03
By Sandi Tabor

Proposed Amendments to Engrossed Senate Bill No. 2348

March 14, 2003

Presented by the Office of Attorney General

Page 4, line 5, overstrike "Division means the" and overstrike "training section of the bureau of criminal investigation."

Renumber accordingly.

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