2011 SENATE POLITICAL SUBDIVISIONS

SB 2164

2011 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee
Red River Room, State Capitol

SB 2164
January 20, 2011
13151

☐ Conference Committee

Committee Clerk Signature Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to requirements for detection of deception instruments and examiners.

Minutes: Attached testimony

Senator Andrist opened the hearing on SB 2164 relating to requirements for detection of deception instruments and examiners.

Senator Lyson:, District 1, Williston. I favor SB 2164 as a request of the lie detector people who give lie detector tests in North Dakota.

Senator Olafson: What's been your professional experience with lie detectors in your previous life? Did you ever have an experience with using them? Secondly, have you ever gone through one yourself just to see what it was like?

Senator Lyson: I was given a lie detector test, where the tester caught me lying on the test. So they do work.

Dale Maixner: Agent with the Bureau of Criminal Investigation, and Chairman of the Polygraph Examiners Board. I am here to speak in support of this bill, on behalf of the Attorney General's office and the Polygraph Examiners Board.

Senator Andrist: Is there anyone else in the room to testify either for or against this bill. I am closing the hearing on SB 2164.

Senator Olafson: Motion to Do Pass
Senator Lee: 2nd

Committee Discussion:

Senator Dotzenrod: One of the things I am looking for in here is a fee, a licensing fee.

Dale Maixner: The licensing fee, I believe is $35.00 annually and that is covered in the administrative rules.

Senator Dotzenrod: Okay.

Senator Andrist: If there isn't any further discussion, lets vote on this bill.

Roll call vote:
5 Yes, 0 No 0 Absent
Let the record show that the bill has recommended by us.
Carrier: Senator Laffen

Date: 1-20-2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2164

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator John Andrist	✓		**Senator Curtis Olafson**	✓	
Senator Lonnie Laffen	✓				
			Senator Jim Dotzenrod	✓	
Senator Judy Lee	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Laffen

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

REPORT OF STANDING COMMITTEE

SB 2164: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2164 was placed on the Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2164

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2164
March 8, 2011
15088

☐ Conference Committee

Committee Clerk Signature DRenose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2164.

Dale Maixner, Agent, Bureau of Criminal Investigation: Support, explained the bill (see attached 1).

Rep. Delmore: Do these people have a recertification process each year.

Dale Maixner: Right now under the state law, there is no minimum recertification process. If the member is a member of the American Polygraph Association, their requirement is that every two years a member of that organization must have at least 40 hours of training.

Rep. Delmore: If I pass the test, I could be an examiner for life without ever doing any recertification or additional education, no matter how much techniques may change over the years.

Dale Maixner: That's correct. That is one of the things that we are looking at changing in administrative rules where the examiners of the state will have to meet or have a certain number of recertification hours every few years.

Rep. Delmore: Do you have a Board that certifies these people right now.

Dale Maixner: Yes, it's called the Examiners Polygraph Board. I think the official name is Detection, Deception Examiners Board. Right now, are main duties are licensing the new examiners and approving reciprocation with other states.

Rep. Delmore: Do you do background checks on people that would fall under part B of that last section where the Attorney General can approve it because they were from another accredited school. Do you do a background check on any of them?

Dale Maixner: Yes, there is a background check done. They have to meet certain standards and part of the requirements are that they have not been convicted of a

felony in a certain number of years. The Board makes those recommendations to the Attorney General on the licensing.

Rep. Onstad: It states that the examiner shall, when requested by a person, to get the results of the test, don't those automatically go back to the person that you examined.

Dale Maixner: The reason for that section is, if I'm conducting an exam, I cannot tell right there how I'm going to score this individual, whether he is found deceptive or not, or inconclusive. Many times it takes me some time to go back and look at the charts. There may be a time lag there depending on what other things are going on with the examiner.

Rep. Onstad: Your actual findings have to be requested by the person; it's not automatic that you're going to give a copy of the findings to the person within a reasonable amount of time. Wouldn't it just be automatic, here's the results.

Dale Maixner: For example, if I was doing a polygraph exam for Burleigh County Sheriff's Dept., the investigator from the Sheriff's Dept. would contact me and that investigator would have the contact with the individual who is being tested. We usually ask that investigator to get the results to the individual being tested. After the initial exam I don't have any further contact with those individuals.

Rep. Onstad: On the last page it talks about the applicants. I'm not sure how many polygraph examiners we have in the state, but it says that the person has to be a resident of ND. Is that problematic along the Red River, with Fargo and Moorhead or Grand Forks and East Grand Forks.

Dale Maixner: Currently we have 14 examiners licensed in the state. Out of the 14, three of them are actually out-of-state residents; SD, VA, etc. They mainly come into line through reciprocity with their home states that they are licensing.

Rep. Onstad: It says that the applicant is a ND resident. Am I missing something?

Dale Maixner: I believe there is an area in there that speaks about reciprocity. That may be covered in the administrative rules also as to reciprocity.

Chairman DeKrey: Thank you. Further testimony in support of SB 2164. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2164?

Rep. Beadle: I move a Do Pass.

Rep. Hogan: Second the motion.

13 YES 0 NO 1 ABSENT DO PASS CARRIER: Rep. Kretschmar

Date: 3/8/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2164

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Beadle Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2164: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2164 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2164

TESTIMONY FOR SENATE BILL 2164

Mr. Chairman and members of the committee,

My name is Dale Maixner and I am an Agent with the Bureau of Criminal Investigation and chairman of the Polygraph Examiners Board. I am here to speak in support of this bill on behalf of the Attorney General's Office and the Polygraph Examiner's Board.

The bill you have before you is an attempt to bring North Dakota law in line with the current best practices in the polygraph field. Section 1 refers to section 43-31-02 of the Century Code where the bill sets the minimum physiological parameters that are to be monitored during any polygraph exam. This follows the guidelines established by the American Polygraph Association. The parameters to be monitored are blood amplitude and heart rate, electro dermal activity which is monitored by the finger plates attached to the subject, and breathing sensors placed on the chest and stomach areas.

Section 2 of the bill deals with section 43-31-07 of the Century Code and the qualifications of the applicant where I will point out that one of the items changed was the age of the applicant which was changed to 21. The reasoning for this change was to put the age in line with the minimum requirements that many of the accredited polygraph schools now have. These minimum requirements may be a combination of minimum age, a college degree or 60 semester hours of college credits. Along with this the minimum age could be a consideration in whether another state would allow licensing reciprocity. Another consideration in making the change in the age was while formulating the questions to

be asked during an exam the examiner must formulate questions that are fair to the individual and will provide an opportunity for the individual to react to these questions which would indicate truthfulness on his part. In formulating these specific questions the examiner must draw on their life experiences and knowledge of human behavior. Many times these questions are difficult to formulate and even experienced examiners sometimes struggle with these questions.

In the amendment to section 3 which refers to section 43-31-16 of the Century Code, under subsection 4b, it is our feeling that an applicant who in the previous 12 months has successfully completed a basic polygraph course offered by an accredited school, where the courses are usually 8 to 10 weeks in duration, should be qualified to be licensed in North Dakota, if they meet all other requirements.

I would be happy to answer any questions that the committee members may have.

Thank you