

Testimony of the North Dakota Private Investigative and Security Board (NDPISB)
Senate Bill No. 2095
Senate Industry, Business and Labor Committee
January 11, 2021

Chairman Klein and members of the Committee, thank you for the opportunity to comment on Senate Bill 2095. My name is Justin Hagel, attorney working on behalf of the North Dakota Private Investigative and Security Board, otherwise known as the NDPISB. My public testimony today is advocating for passage of Senate Bill 2095 as proposed by the Board, and to answer any questions the Committee has on the bill.

COMMENTS ON BILL DRAFT

Senate Bill 2095 accomplishes three separate changes to the NDPISB's statutory authority. First, it amends Section 43-30-01 of the North Dakota Century Code concerning definitions applicable to the Board by enumerating in statute the office of "Executive Director" of the NDPISB. This change reflects current Board practice of hiring an "executive director" to administrate Board functions including licensing and certification of instructors, armed security providers, and private investigators. The Board seeks to have this office enumerated in statute reflect the "executive director's" responsibilities to the Board in carrying out its administrative functions, and clarify the executive director is empowered to act on behalf of the Board.

Second, Senate Bill 2095 amends Sections 43-30-10 and 43-30-10.1 of the North Dakota Century Code. These changes are specific to the injunction authority the Board and would permit the Board to seek an injunction in either an administrative action before the Board, or through a proceeding brought in North Dakota district court. This change is made in response to recent litigation involving the Board seeking to enforce, among other claims, an injunction against an unlicensed security provider. That provider, known as "Tigerswan," challenged the basis for the Board's injunction remedy in district court and challenged the Board's authority to proceed with an enforcement action in district court without bringing an injunction remedy. The district court agreed with Tigerswan, and on appeal, the North Dakota Supreme Court upheld the district court decision.

Based on the precedent set by the North Dakota Supreme Court, there is a risk that the Board would be unable to seek an injunction against a person or entity who provides unlicensed private security or private investigative services within the State of North Dakota. Under current law, the Board may only seek an injunction against an entity illegally providing unlicensed private investigative or private security services in North Dakota through a district court action. If that person or entity leaves the State of North Dakota while the matter is pending, the district court could determine no injunction is necessary as the unlicensed activity is no longer occurring within the State of North Dakota, and therefore dismiss the full enforcement action by the Board. Subsequently, that same violator could reenter North Dakota

and again provide services requiring the process begin anew with another enforcement action commenced in district court.

To prevent this problem, Senate Bill 2095 would make clear the Board has authority to seek an injunction and impose administrative fees in either district court or through an administrative action. This change would permit any enforcement action to continue regardless of the venue in which it is brought and regardless of whether the alleged violator has ceased operation in the State of North Dakota or moved outside the jurisdiction of North Dakota.

The final change in Senate Bill 2095 concerns Section 43-30-16, which is the statutory fee authority of the NDPISB. The Board proposes amending from twenty-five dollars (\$25.00) to thirty dollars (\$30.00) the annual fees for armed certificate holders and for initial and renewal registrations for private investigative and private security services.

As the Committee is likely aware, the Board does not receive annual appropriations to fund its operations. All funding is derived from the licensing and certification fees the Board assesses. The Board experienced out-of-ordinary legal and investigative expenses directly related to the Dakota Access Pipeline protests and investigation of unlicensed activities of private investigative and private security providers. These actions resulting in referrals for criminal prosecution, and the initiation of administrative actions and litigation against unlicensed providers.

This amendment reflects the increased costs of administering the licensing and certification of private investigative and private security providers and the increased number of enforcement actions undertaken by the Board. Senate Bill 2095 would help address those costs and support continued Board administrative functions.

Thank you again for the opportunity to present this testimony. We, the North Dakota Private Investigative and Security Board, urge you to issue a do pass recommendation on Senate Bill 2095.

Justin Hagel,

Legal Counsel, North Dakota Private Investigative and Security Board.