

2021 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2116

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SB 2116
01/07/2021

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| Relating to the use of deadly force when protecting nuclear assets; declare emergency. |
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Chair Vedaa opened the hearing at 11:00 a.m. with Sen Vedaa, Sen Meyer, Sen Elkin, Sen K Roers, Sen Wobbema, Wen Weber, and Sen Marcellais all present.

Discussion Topics:

- Certification maintenance
- Federal code vs State law

Michelle Hagel, ND National Guard legal dept.: Testified in support. #232.

Sen. Wobbema moved a Do Pass.

Sen. Weber second the motion.

Roll Call Vote: 7—YES 0—NO -0- absent MOTION PASSED

| Senators | Vote |
|----------------------------|-------------|
| Senator Shawn Vedaa | Y |
| Senator Scott Meyer | Y |
| Senator Jay R. Elkin | Y |
| Senator Richard Marcellais | Y |
| Senator Kristin Roers | Y |
| Senator Mark F. Webber | Y |
| Senator Michael A. Wobbema | Y |

Sen Wobbema will carry the bill.

Adjourned at 11:45 a.m.

Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2116: Government and Veterans Affairs Committee (Sen. Vedaa, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2116
was placed on the Eleventh order on the calendar.

TESTIMONY OF
LIEUTENANT COLONEL MICHELLE HAGEL
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
7 JANUARY 2021
SENATE BILL 2116

Good morning Mr. Chairman and members of the committee, I am Michelle Hagel, legal counsel for the North Dakota National Guard. I am here to testify in support of Senate Bill 2116. This bill provides a defense for using deadly force, if necessary, to protect nuclear assets.

The 219 Security Forces Squadron (SFS) is part of the North Dakota Air National Guard and is located at Minot AFB. Their mission is to provide support to the 91 Missile Wing Security Forces, by providing daily and surge capacity security to the missile complex in North Dakota. In order to successfully conduct that mission, the 219 members must maintain certification in nuclear security through continually training in the missile complex.

At present, the 219 members when training and serving in the missile complex, have been placed in a Title 10 Active Duty status, so they may respond to a real world emergency under federal Rules for Use of Force. The Air Force may not be able to provide Title 10 funding for the 219 mission in the future, due to budget constraints. If this happens, our 219 members will need to continue to train and provide operational support to the missile complex in a federal training status, under 32 U.S.C. § 502 (Title 32). Members who perform training and operational support in a Title 32 status, though under federal code, fall under the jurisdiction of their State law and their State Rules for Use of Force.

North Dakota State law allows for the use of deadly force to defend self, or others, against imminent death or serious bodily harm. Federal law and Air Force Instruction, provides for use of deadly force, which is more expansive than North Dakota State law, for the protection of particular assets, like nuclear weapons. This presents a tactical and legal concern for the 219 members who may have to protect nuclear assets from a real world threat when in a Title 32 status, under State law.

Minot AFB, therefore, will not allow 219 members to train or provide operational support to the missile complex while in Title 32 status. The reason for this is, while under State jurisdiction, the 219 may be called up to respond to an actual threat. If State law does not provide a defense for the use of deadly force for the 219 member when protecting the nuclear asset, then the Air Force cannot allow our 219 members in the missile complex. This gap in federal and state law when providing security to the nuclear asset will not allow the Air Force to take any risk with our 219 members. If the Air Force does not allow our members to train in the missile complex, the 219 members will lose their certification. As a result, the 219 will not be able to perform their mission.

We are asking for a narrow expansion of authority to use deadly force to protect the nuclear assets, if the situation requires. This authority works in conjunction with Federal law and would allow the 219

members to continue to train and protect these critical national security assets, under the protection of State law.

I ask for your support of SB 2116 and will stand for any questions that you may have.

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2116

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2116
3/11/2021

Relating to the use of deadly force when protecting nuclear assets; and to declare an emergency

Chairman Kasper opened the hearing at 9:26 a.m.

| Representatives | Roll Call |
|----------------------------------|------------------|
| Representative Jim Kasper | P |
| Representative Ben Koppelman | P |
| Representative Pamela Anderson | P |
| Representative Jeff A. Hoverson | P |
| Representative Karen Karls | P |
| Representative Scott Louser | P |
| Representative Jeffery J. Magrum | P |
| Representative Mitch Ostlie | P |
| Representative Karen M. Rohr | P |
| Representative Austen Schauer | P |
| Representative Mary Schneider | P |
| Representative Vicky Steiner | P |
| Representative Greg Stemen | P |
| Representative Steve Vetter | P |

Discussion Topics:

- Training and certification requirements
- Sustainment training

Major Jay Sheldon, Office of the Adjutant General's Office, testified for **Michelle Hegel, Legal Counsel, ND National Guard** in favor, #7393.

Major Gregory Goodman, Commander, 219th Security Forces Squadron, testified in favor, #7394.

Rep. Magrum moved **Do Pass**. **Rep. Ostlie** seconded.

| Representatives | Vote |
|----------------------------------|-------------|
| Representative Jim Kasper | Y |
| Representative Ben Koppelman | Y |
| Representative Pamela Anderson | Y |
| Representative Jeff A. Hoverson | Y |
| Representative Karen Karls | Y |
| Representative Scott Louser | Y |
| Representative Jeffery J. Magrum | Y |
| Representative Mitch Ostlie | Y |
| Representative Karen M. Rohr | Y |
| Representative Austen Schauer | Y |

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| Representative Mary Schneider | Y |
| Representative Vicky Steiner | Y |
| Representative Greg Stemen | Y |
| Representative Steve Vetter | Y |

Motion passes. 14-0-0. **Rep. Magrum** seconded.

Additional written testimony: #7094

Chairman Kasper ended at 9:49 a.m.

Carmen Hart, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2116: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB
2116 was placed on the Fourteenth order on the calendar.

TESTIMONY OF
LIEUTENANT COLONEL MICHELLE HAGEL
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
4 MARCH 2021
SENATE BILL 2116

Good afternoon Mr. Chairman and members of the committee, I am Michelle Hagel, legal counsel for the North Dakota National Guard. I am here to testify in support of Senate Bill 2116. This bill provides a defense for using deadly force, if necessary, to protect nuclear assets.

The 219 Security Forces Squadron (SFS) is part of the North Dakota Air National Guard and is located at Minot AFB. Their mission is to provide support to the 91 Missile Wing Security Forces, by providing daily and surge capacity security to the missile field in North Dakota. In order to be qualified to conduct that mission, the 219 members must maintain certification in nuclear security through formal, and continual, training in the missile field.

To help frame the issue, I will briefly explain statuses. In the National Guard we have a number status we may serve in, three main ones are State Active Duty, Title 10 and Title 32, a reference to the section of United States Code which authorizes the status. First, State Active Duty is the status we are in when the Governor calls us out for a State purpose. Second, when called up under United States Code Title 10 (Title 10), we are in an active duty status called up by the President for a national purpose. Third, is Title 32 status, 32 U.S.C. § 502, we are under the administrative control of the Governor, but we are performing Federal training, such as annual training, guard drill or full-time National Guard Duty. Title 32 may also include operational training such as our COVID mission or the mission at the southern border. We are funded by the Federal government and have Federal benefits, but in a Title 32 status, we fall under State law, UCMJ and Rules for Use of Force.

At present, the 219 members when training and serving in the missile field are placed in a Title 10 Active Duty status, so they may respond to a real world emergency under Federal Rules for Use of Force. The Air Force may not be able to provide Title 10 funding for the 219 mission in the future, due to budget constraints. If this happens, our 219 members will need to continue to train and provide operational support to the missile field in a Federal training status, Title 32. Members, who perform training and operational support in a Title 32 status, though under Federal code, fall under the jurisdiction of their State law and, therefore, their State Rules for Use of Force.

North Dakota State law allows for the use of deadly force to defend self, or others, against imminent death or serious bodily harm. Federal law and Air Force Instruction, provides for use of deadly force, which is more expansive than North Dakota State law, for the protection of particular assets, like nuclear weapons. This presents a tactical and legal concern for the 219 members who may have to protect nuclear assets from a real world threat when in a Title 32 status, under State law.

Because of this gap in Federal and State law when protecting the nuclear asset, the Air Force will not allow the 219 members to enter the field to train in a Title 32 status, as they will not take any risk with our Airmen. If the Air Force does not allow our members to train in the missile field, the 219 members will lose their certification. As a result, the 219 will not be able to perform their mission. Consequently, we run the risk of losing the mission.

We are asking for a narrow expansion of authority to use deadly force to protect these nuclear assets, if the situation requires. This authority works in conjunction with Federal law and would allow the 219 members to continue to train and protect these critical national security assets, under the protection of State law.

I ask for your support of SB 2116 and will stand for any questions that you may have.

TESTIMONY OF
MAJOR GREGORY GOODMAN
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
4 MARCH 2021
HOUSE BILL 2116

Good afternoon, Mr. Chairman and members of the committee. I am Major Greg Goodman, Commander of the 219th Security Forces Squadron. I am here today to testify in support of Senate Bill 2116. This bill provides a legal authority for the reasonable use of deadly force to protect nuclear assets.

The 219th is part of the North Dakota Air National Guard and we train to provide support to an active duty mission assigned to Minot Air Force Base (AFB). Our mission is to train and maintain certification to provide security to the missile field surrounding the Minot AFB. We support the active duty mission by providing daily and surge security requirements.

The 219th has 139 authorized personnel, 59 full-time and 80 part-time or traditional guard members. One hundred and twenty three are Security Forces personnel, directly impacted by this law while performing their security mission in the missile field.

After returning from their initial entry training technical training the typical Security Forces Airmen will spend 95 days completing initial training and certification. Following a week of administrative in processing they complete one week of nuclear academics training designed to provide foundational knowledge in the performance of their duties in the missile field. Then they complete a 45-day rotation to the missile field, gaining practical experience, improving proficiency of tasks and duties that culminates with independent evaluation of their performance.

Annual sustainment training consists of a two-week period where Airmen work at a missile field working on the job certification proficiency or enhancement, and again requiring independent evaluations of their performance.

Absent proper and appropriate legal authorities, 219th Security Forces Airmen are unable to perform the full scope of their duties in missile field in a Title 32 status.

Senate Bill 2116 allows for a narrow expansion of authority to use deadly force to protect nuclear assets, should the situation require it. This would allow our North Dakota Air National Guard members the ability to respond in the nuclear missile field under the full protection of State law the ability to protect these vital national security assets.

I ask for your support of Senate Bill 2116 and I stand to answer questions.

Committee Members

The North Dakota Veterans Legislative Council Supports this bill and urges your passage of this legislation.

Jim Nelson Legislative Director and President of NDVLC