

February 5, 2018

Finance Committee: 1-29-2018

RESOLUTION NO. _____

**URGING THE STATE REPRESENTATIVES OF ST. LAWRENCE COUNTY TO PASS
LEGISLATION REGARDING PISTOL LICENSURE TO CREATE UNIFORMITY
AMONG THE VARIOUS COUNTIES**

By Mr. Timmerman, Chair, Finance Committee
Co-Sponsored by Mr. Acres, District 8 and Mr. Lightfoot, District 3

WHEREAS, the New York State Court of Appeals has determined that Penal Law § 400.00 et. al. is the “exclusive statutory mechanism for the licensing of firearms in New York State”, and

WHEREAS, pursuant to the Penal Law § 400.00(2), “A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof...”, and

WHEREAS, in New York State, a license to carry a firearm must be issued by the local licensing authority which is defined under Penal Law §265.00 (10), “Licensing officer” means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; for the purposes of section 400.01 of this chapter the superintendent of state police; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance, and

WHEREAS, the Board of Legislators has long been concerned with the manner in which pistol licensing occurs in St. Lawrence County, specifically with respect to the addition of restrictions on licenses, and

WHEREAS, it is apparent by the language of the statute regarding the pistol licensing officer that there are several different solutions employed around the State of New York regarding the designation of said officer, and

WHEREAS, on December 7th, 2017, Opinion 17-166 issued by the Judicial Conduct Board of the Office of Court Administration indicates that a Judge who initiates the filing of petitions for revocations is essentially taking authority and discretion granted to the District Attorney or the County Attorney as to who will be prosecuted, and

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WHEREAS, the opinion states “A judge must always avoid even the appearance of impropriety (see 22 NYCRR 100.2) and must always act in a manner the promotes public confidence in the judiciary’s integrity and impartiality (see 22 NYCRR 100.2)”, and

WHEREAS, the Judicial Conduct Board stated further that judges must “maintain their independence from prosecutors and not participate or assist in ‘what is essentially the work of the prosecutor’s office’ (Opinion 16-09; 13-33; 10-113; 00-95)”, and

WHEREAS, the Judicial Conduct Board concluded that “a judge who is licensing officer must not initiate license revocation proceedings...” as “it would readily create the impression that (1) the judge is engaging in ex parte communications with the affected party, (2) the judge is prosecution-oriented, (3) the judge’s impartiality is compromised, and/or (4) the judge has pre-determined the license holder’s guilt”, and

WHEREAS, in the opinion of the Board of Legislators, in order to avoid the appearance of impropriety and to avoid engaging in unethical conduct, a judge of the State of New York should not be involved with the pistol licensing process at all, and

WHEREAS, the Board of Legislators seeks to create uniformity in the issuance of pistol licenses within the County of St. Lawrence and uniformity within the State of New York regarding the issuance of pistol licenses, and

WHEREAS, in the absence of State legislative change, the Board of Legislators is of the opinion that the decision to prosecute pistol license revocations should rest solely with a prosecuting agency, whether that be the District Attorney or the County Attorney, and

WHEREAS, the Board of Legislators believes it is in the best interests of all that the State creates legislation to address this issue permanently and grant counties the ability to designate a different pistol licensing officer,

NOW, THEREFORE, BE IT RESOLVED the Board of Legislators urges the State Senate and State Assembly to amend the law to permit counties to designate a pistol licensing officer other than a judge, and

BE IT FURTHER RESOLVED that the Board of Legislators directs the County Attorney to carry out the terms of this resolution by all legal means possible, and

BE IT FURTHER RESOLVED that certified copies of this resolution be forwarded to Governor Andrew Cuomo, Assemblywoman Addie Jenne, Assemblyman Billy Jones, Assemblyman Marc Butler, Assemblyman Ken Blankenbush, Senator Joseph Griffo, Senator Patricia Ritchie, and Senator Elizabeth Little.