

1999 HOUSE TRANSPORTATION

HB 1079

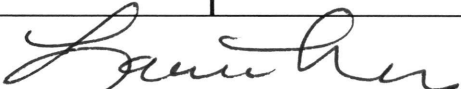
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1079

House Transportation Committee

Conference Committee

Hearing Date January 8, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-54.5
1		x	0-.8
Committee Clerk Signature 			

Minutes:

CHAIRMAN KEISER opened the hearing on HB 1079; A BILL RELATING TO THE POWERS OF THE HIGHWAY PATROL.

COLONEL JAMES M. HUGHES, Superintendent, North Dakota Highway Patrol introduced the bill. (See attached testimony).

REP. MEYER: What is the correct order of a 911 call?

COL. HUGHES went through the order. The 911 call comes into state radio or over cell call, the state radio broadcasts it as a medical situation, the closest officer is the first to answer. The closest officer is most often the patrol. We must first be directed by another state agency so that we could approach the house and control the situation. We don't leave those situations unattended, but we are hanging out there when it comes to a question of jurisdiction.

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House Transportation Committee

Bill/Resolution Number 1-8 minutes

Hearing Date January 8, 1999

REP. MAHONEY: I really support this in giving you more authority, but my question as a state legislator is do you have the resources for this?

COL. HUGHES replied that it would not affect their ability to do their job. This is more just to cover the officers that are out there now working. We are not looking for any more work to do. We are not looking for any more people because of the change of the law. Right now we can only respond when requested by another state agency. It should be clarified.

REP. GRUMBO: Has the court of law ever challenged the patrol?

COL. HUGHES answered no. We have been sued over the years and we have a few pending now for different instances. When we use power, even on the "bad guy," we have to face the question of "what were you doing in there." When there is a problem where somebody needs some help, we should be able to go in the house and help somebody without wondering whether we should be in there or not. We respond more often first, then the Sheriff's Department is second on the scene. We are many times the closest person and quicker to respond.

REP JENSEN asked Col. Hughes what the liability issue is. Does it lessen with this bill.

COL. HUGHES mentioned that they file with risk management now monthly. Any time there is a use of force, the way that the law is written is putting the state at risk.

CHAIRMAN KEISER: Are you now reporting instances where you are operating off of state property?

COL. HUGHES said that yes, all is reported to Risk Management where they feel there is some potential risk in the state. They keep everyone informed of what could potentially be seen as a wrongful issues.

REP. WEISZ questioned how jurisdiction will apply if this bill is passed.

COL. HUGHES said that they would not initiate any investigation where they are not requested in an emergency situation. They also would not respond after the Sheriff is on the scene. He emphasized that they would not be the primary agency. If they were asked to stay and help, they would.

REP. WEISZ asked if any arrests could be made or if they had to wait until the proper jurisdiction is on the scene.

COL. HUGHES said that they will arrest and file the preliminary report, but only to get the situation under control until somebody else gets there. If the patrollers have to go, they should go protected.

REP. THORPE noted the gray area in the authority. Does the call from the 911 office give no authority?

COL. HUGHES said that when the call from the state radio comes in, the ambulance is dispatched, but they cannot help until they are asked to assist.

REP. THORPE asked if being a private citizen gave them any authority.

COL. HUGHES said that any private citizen can respond without request for assistance from another. The uniform really means nothing, but it also means no protection.

REP. SCHMIDT asked if the patrol could be sued as a private citizen.

COL. HUGHES responded that if they were harmed in the incident, they would not be covered under workers compensation because they are acting as a private citizen rather than a peace officer.

CHAIRMAN KEISER brought up the tool chest agreement. Doesn't that give the patrol the authority to respond? Why not use that with all of the political subdivisions in the state?

COL. HUGHES replied that that agreement is a single agreement with a short term request. The law is specific to single instances.

DICK PECK, North Dakota Peace Officers Association testified in support of the bill. He noted the NDPOA's support for the bill and stated that this is really a no nonsense bill. He stated that the NDPOA is here to serve the public and that it is really what this bill does. He referred back to the injury area with the workers compensation.

REP. WEISZ questioned the request over the radio.

DICK said that there are two different frequencies. The warning goes out over the state radio, but it is not the same as the patrol radio. They need to be called by the deputy.

BOB BENNETT, Attorney General's Office, appeared as legal counsel on behalf of the North Dakota Highway Patrol. He noted that he did draft the bill to be very limited. There is a three step process that is required for this to work. The officer has to be responding to a request. They cannot act on their own. There also has to be emergency assistance. Once the emergency is over, the right to act is gone. The last thing is that it requires an immediate response. This is the criteria that the officer will have to establish if it comes up in court.

REP. THORPE: Is this giving the same authority as other peace officers in the state?

BOB said that this would authorize them to act in any request. It authorizes the patrolmen to act as a peace officer. It gives them the authority to use force. Again, it is very limited.

REP. KEMPENICH questioned the request standards.

BOB outlined how it is or isn't an emergency. It is a matter of policy. He said they are trying to find a definitive line, and that is beyond what this bill is. There has to be an emergency.

CHAIRMAN KEISER closed the hearing on HB 1079.

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House Transportation Committee

Bill/Resolution Number 1-8 minutes

Hearing Date January 8, 1999

GENERAL DISCUSSION TOOK PLACE. Chairman Keiser, Representatives Belter, Mahoney, and Kempenich participated.

COMMITTEE WORK

REP. THORPE moved to DO PASS on HB 1079. REP. SCHMIDT seconded the motion. The motion carried.

ROLL CALL - 15 YAE, 0 NAE, 0 ABSENT AND NOT VOTING.

FLOOR ASSIGNMENT: REP. THORPE

Date: 1/8
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1079

House Transportation Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Rep Thorpe Seconded By Rep Schmidt

Representatives	Yes	No	Representatives	Yes	No
Representative Keiser, Chair	X		Representative Thorpe	X	
Representative Mickelson, V. Ch.	X				
Representative Belter	X				
Representative Jensen	X				
Representative Kelsch	X				
Representative Kempenich	X				
Representative Price	X				
Representative Sveen	X				
Representative Weisz	X				
Representative Grumbo	X				
Representative Lemieux	X				
Representative Mahoney	X				
Representative Meyer	X				
Representative Schmidt	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Thorpe

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

REPORT OF STANDING COMMITTEE (410)
January 8, 1999 11:59 a.m.

Module No: HR-04-0420
Carrier: Thorpe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1079: Transportation Committee (Rep. Keiser, Chairman) recommends DO PASS
(15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1079 was placed on the
Eleventh order on the calendar.

1999 SENATE TRANSPORTATION

HB 1079

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1079

Senate Transportation Committee

Conference Committee

Hearing Date February 11, 1999

Tape Number	Side A	Side B	Meter #
1		x	3,005-End
2	x		1-207
March 11, 1999-Tape 2	x		600-1504
Committee Clerk Signature <i>Ron A. Schaeffer</i>			

Minutes:

SENATOR B. STENEHJEM opened the hearing on HB 1079. Committee members present included: Sens. Bob Stenehjem, R. Schobinger, D. Mutch, D. Cook, D. O'Connell, and V. Thompson. Senator Bercier was absent.

COLONEL JIM HUGHES, ND HIGHWAY PATROL testified in support of HB 1079. This bill passed in the house; 39-03-09 has only been amended twice in the past thirty years. Currently, the Highway Patrol has general police powers in certain jurisdictions. We can act as a police officer if we are on state property, for violations on the highways or highway right ways, and in accordance with 44-08-02 in the Century Code which states that an officer when requested by another agency on a single request for a single function can operate. The change in the law was necessary because of risk management issues in the state's loss of sovereign immunity such as an officer assisting in an arrest outside of his jurisdiction; the state can then be held liable if it's

someplace other than the highway or state capitol grounds (he gave an example). In 1997-1998, the Highway Patrol provided assistance to other agencies 3, 982 times. Because small towns don't have police officers, many times the Highway Patrol may be needed but we don't have the jurisdiction (see example). We would have no jurisdiction to respond to a criminal if not on state property. We'd have no coverage by risk management and our worker's compensation may be questioned. Close to 50% of the time in 1996 when we drew our weapons, they weren't cases initiated by us. In 1997, 44% of the incidents with weapons drawn weren't stops we made that were initiated but we were helping someone else. The potential is greater if the Highway Patrol does go through the smaller towns that they are needed because they don't have any police officers. The Highway Patrol will be the closest ones in the vicinity if there is any trouble and the quickest to respond. The public expects the Highway Patrol Trooper to respond and they believe we can. A Highway Patrol Trooper should never have to question whether they are being backed in these type of situations by the state of North Dakota. A police officer in the city of Bismarck never has to question whether they have a right to be there when they get a call. I have cautioned the troopers not to put themselves in those situations where they put themselves at risk. This bill is designed to protect the citizens, protect the state from lawsuits, and protect the trooper. I asked the Attorney General's office to keep it narrow and provide provisions. Those provisions are: (1) a request by a citizen; (2) it has to be an immediate request; (3) the request can be made by another law enforcement agency or not; and (4) it has to be an immediate emergency.

SENATOR SCHOBINGER Do the courts handle the situations with jurisdiction and without the same way?

COLONEL JIM HUGHES If I went into a situation with no jurisdiction, I would be acting as a citizen, yet I am armed and if I shot someone during that arrest I would be acting as a citizen. I would feel compelled to respond but I would be a citizen because I don't have the jurisdiction to be there.

SENATOR O'CONNELL Is there a reason why we shouldn't put an emergency clause on this or are you comfortable?

COLONEL JIM HUGHES The sooner the better even though these are not common daily occurrences.

SENATOR THOMPSON Isn't there a moral oath that patrolman take that if there's trouble you respond?

COLONEL JIM HUGHES Our job is to protect the citizens of the state of North Dakota. Things are complicated now and everything gets looked at in court. I would feel compelled to help you but I would be putting myself and the state of North Dakota at risk.

SENATOR THOMPSON This would take care of the legal risk.

COLONEL JIM HUGHES I believe it would.

SENATOR COOK Could there be a dispute over authority between a trooper or sheriff?

COLONEL JIM HUGHES Once the local authority responds, this section does not become an issue any longer. As soon as the county sheriff shows up I refer right back to the mutual aid agreement. I'm no longer bound by this law.

SENATOR B. STENEHJEM Are your troopers trained in domestic violence?

COLONEL JIM HUGHES Yes, we are trained in that area and are doing additional training.

DICK PECK, ND POLICE OFFICER ASSOCIATION testified in support of HB 1079. Our sheriffs and chiefs do support this bill. A few agencies would like a report mechanism. If you have an emergency situation and a trooper responds to that call but the local authorities don't know about it, it could cause problems. We need to protect our troopers. We also need to think about workers compensation.

SENATOR COOK Did any of the county sheriff's have any concern over the question of authority once they've arrived?

DICK PECK No.

BOB BENNETT, ATTORNEY GENERAL'S OFFICE testified in support of HB 1079. I'd like to respond to the legal issues. There are various things I've been looking at such as the use of force. The law enforcement officers have a much broader use of force, they may ask a private citizen to assist in using force. The execution of public duty is another law that says if they stay within their public duty they cannot be charged with a crime. If the troopers are acting beyond their public duty they may not have the availability of a defense. I think the Colonel could ask the troopers to respond to an incident and they still may be covered by worker's compensation. However, I don't know how worker's comp or civil or criminal court will look at it if there were charges brought. We want to give tuition to the family of the trooper who may be killed in the line of duty, they don't have that yet. The major issue is state employee liability. They will be covered if they stay within the limits of their employment. We want to keep it restricted to these limited incidents and we also want to address the notification requirement. Would the notification requirement be classified as a jurisdiction requirement? If the trooper acts today and

does not call till an hour and a half later would that mean his conduct was illegal? This can be handled through the administration itself.

SENATOR B. STENEHJEM We will close the hearing on HB 1079.

March 11, 1999 - Tape 2

SENATOR O'CONNELL I move that we put an emergency clause on.

SENATOR COOK I second.

SENATOR O'CONNELL Instead of waiting till August we should do it now and protect some of our officers.

SENATOR THOMPSON Will the emergency clause give the Highway Patrol the time they need to work out anything that needs to be addressed?

SENATOR O'CONNELL There may be some details they need to work out but if they go for a domestic violence call or something they can take care of it without being liable.

Amendment was voted on by a voice vote. Amendment passed unanimously.

SENATOR O'CONNELL I move for a Do Pass as Amended.

SENATOR MUTCH I second.

SENATOR THOMPSON Do we have the reporting process worked out because there were some law enforcement officials that are still opposed to this because of the lack of reporting from the Highway Patrol to the law enforcement officials.

DICK PECK, ND PEACE OFFICERS' ASSOCIATION It is in place. If they get a call for an emergency situation they would check out through state radio and then they would notify the local authorities. This bill, it may be used once or twice a year. It's all in place now.

SENATOR O'CONNELL It comes from the old school of fear of having state police.

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Senate Transportation Committee

Bill/Resolution Number Hb 1079

Hearing Date February 11, 1999

DICK PECK That's correct.

SENATOR B. STENEHJEM (Read a statement) What happens if the Highway Patrol got to the scene and took care of the incidents and the Sheriff never showed up.

DICK PECK Again, they have to report to state radio. They would also notify the agency.

The roll call was taken (5 Yeas, 1 Nay, and 1 Absent and Not Voting).

Senator O'Connell will carry HB 1079.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1079

Page 1, line 2, after "patrol" insert "; and to declare an emergency"

Page 1, after line 8, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3-11-99

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1079

Senate Transportation Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number 98070.0102

Action Taken Do Pass as Amended

Motion Made By Sen. O'Connell Seconded By Sen. Mutch

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenehjem-Chairman	X				
Sen. R. Schobinger-V. Chair	X				
Sen. Duane Mutch	X				
Sen. Dwight Cook	X				
Sen. David O'Connell	X				
Sen. Vern Thompson		X			
Sen. Dennis Bercier					

Total (Yes) 5 No 1

Absent 1

Floor Assignment Senator O'Connell

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

REPORT OF STANDING COMMITTEE (410)
March 15, 1999 8:35 a.m.

Module No: SR-46-4746
Carrier: O'Connell
Insert LC: 98070.0102 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1079: Transportation Committee (Sen. B. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1079 was placed on the Sixth order on the calendar.

Page 1, line 2, after "patrol" insert "; and to declare an emergency"

Page 1, after line 8, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

1999 TESTIMONY

HB 1079

House Bill 1079
Comments
By
Colonel James M. Hughes
Superintendent, NDHP

Section 39-03-09 – since 1967 (30 years ago) this section has only been amended twice:

In 1987 subsection 13 was added:

13. To require a motor carrier owner, or a motor carrier's agent, affected by rules adopted under chapter 39-21 to produce logs or other documents to determine compliance with rules adopted under chapter 39-21.

In 1991, subsections 14 and 15 were added:

14. To provide security and protection for the governor, the governor's immediate family, and other officers next in order of succession to the office of governor to the extent and in a manner the governor and the superintendent deem adequate and appropriate.
15. To provide security and protection for both houses of the legislative assembly while in session as in the opinion of the speaker of the house, the president of the senate, and the superintendent are deemed adequate and appropriate.

Currently, the Highway Patrol has general police powers:

- On all state property
- For violations on highways and highway right of way
- In accordance with section 44-08-02 subsection 3 NDCC:

44-08-20. Additional powers of peace officers. Peace officers employed by a law enforcement agency within the state have the power of a peace officer in the following circumstances:

1. To enforce state laws and rules within the jurisdiction of the law enforcement agency by which they are employed.
2. To assist during the necessary absence from office by the requesting officer.
3. When responding to requests from other law enforcement agencies or officers for aid and assistance. For the purposes of this subsection, such a request from a law enforcement agency or

officer means only a request for assistance as to a particular and singular violation or suspicion of violation of law, and does not constitute a continuous request for assistance outside the purview of the jurisdiction of the law enforcement agency by which a peace officer is employed.

4. The powers and duties hereby conferred are supplemental to other powers and duties conferred upon peace officers and do not constitute an obligation beyond the regular course of duty of those officers.

Why the change?

Risk management issues – Example: An officer responds to assistance that results in the use of force or arrest —outside of jurisdiction issue can arise or will arise.

In 1997-1998, Highway Patrol officers logged 3,982 assists to other agencies.

Examples:

Two officers were involved in an incident where they were assisting another agency in a pursuit which later resulted in the subject barricaded in a house where he threatened an officer with a gun. Both officers kept surveillance of the house using the M14s; no shots were fired.

An officer was involved in two separate incidents where he was assisting other law enforcement agencies. Both of these incidents involved assisting with felony stops where the officer had his weapon drawn. No shots were fired in either instance.

An officer was assisting a county sheriff's department in a domestic dispute that resulted in the death of one subject. The officer had his weapon drawn as he approached the scene of the shooting. The only action the officer took was follow-up investigation. This same officer was also involved in assisting another county sheriff's department conduct a felony stop. The officer drew his weapon to cover the deputy as he approached the vehicle. No shots were fired.

In 1996, 47 percent of "weapons drawn" incidents involved Highway Patrol officers assisting another agency and not initiated by the Highway Patrol.

In 1997, 44 percent of "weapons drawn" incidents involved Highway Patrol officers assisting another agency and not initiated by the Highway Patrol.

In addition, the potential is even greater as we patrol rural North Dakota in areas or cities without law enforcement.

Incidents officers respond to include:

- Hang up calls – Example: State Radio requests
- Domestic violence cases – Example: child/mom/dad
- Unforeseen requests while officers are stopped in rural settings – Example: truck stops

I believe the public expects a uniformed state patrol trooper to respond and believes we can and will.

In essence, this bill serves three important purposes:

1. To protect the citizens.
2. To protect the state of North Dakota.
3. To protect the Patrol trooper.