

1999 SENATE GOVERNMENT AND VETERANS AFFAIRS
SB 2131

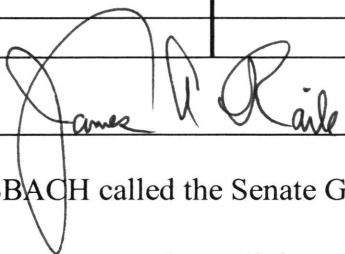
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2131

Senate Government and Veterans Affairs Committee

Conference Committee

Hearing Date January 14, 1999

Tape Number	Side A	Side B	Meter #
1	X		47-2148
Committee Clerk Signature 			

Minutes: CHAIRMAN KREBSBACH called the Senate Government and Veteran's Affairs Committee to order. The clerk was instructed to call the roll. At this time Chairman Krebsbach opened the hearing on SB 2131 which relates to the application of the uniform code of military justice to the North Dakota national guard and military courts within the North Dakota national guard and also relates to military courts of inquiry and court martial sentences.

Appearing before the committee to introduce the proposed legislation to the committee members was Adjutant General Keith Bjerke of the North Dakota National Guard. The purpose of this bill as he indicated is to clean up and update the state statute relating to the uniform code of military justice. It does seem appropriate that from time to time we look at the code and update so that it meets with reality.

At this time the Adjutant General introduced MAJOR ALAN S. DOHRMANN who presented written testimony to the committee relative to the proposed legislation. He indicated that the last

time this was worked on was in 1943. The changes in state code are necessary to bring this in line with federal guidelines that were established in the mid 80's and early '90's. He indicated that there is already a proposed amendment to this legislation. What has happened, from the time this bill was drafted back in December to today, when I am appearing before you; by executive order a new manual for court martials has come out. We believe we need to follow the most current edition. Following testimony by MAJOR DOHRMANN, questions and comments were offered by Senators THANE and W. STENEHJEM. Major DAVID THIELE with the ND Army National Guard, commented on the questions concerning confinement and limiting confinement. When soldiers are deployed overseas they are under title X status and under the current uniform code of military justice at that time. Additional comments and questions were offered by Senators W. Stenehjem, Thane, Krebsbach, and Kilzer.

Following testimony by these individuals no one else appeared in support, opposition to, or neutral position on SB 2131. SENATOR KREBSBACH closed the hearing on SB 2131 at this time.

COMMITTEE ACTION: At this time SENATOR W. STENEHJEM made a motion to adopt the amendment which has been proposed on SB 2131, seconded by SENATOR DEMERS. There was no further discussion. Roll Call vote indicated 7 Yeas, 0 Nays, 0 Absent or not voting. The amendment was adopted by the committee. A motion for a DO PASS AS AMENDED was offered by SENATOR THANE, seconded by SENATOR W. STENEHJEM. Roll Call vote indicated 7 Yeas, 0 Nays, and 0 Absent or not voting. SENATOR W. STENEHJEM will serve as the carrier of the bill.

1-21-99

JANUARY 21, 1999-- Tape 1, Side A, Meter #'s 4515-End and Tape 2, Side A, Meter #'s

0-333--SENATOR DEMERS made a motion to reconsider committee action on SB 2131, seconded by SENATOR Thane. CHAIRMAN KREBSBACH indicated that the reason for this reconsideration was that a fellow senator had a concern about this bill. SENATOR KEN KROEPLIN appeared before the committee. He indicated his concern was with section 10 of the bill. He would like to see that the civilian remains in this section of the bill. He believes that by putting the adjutant general in we are taking the governor out of it and he thinks the civilian touch is important here. A discussion ensued with SENATORS THANE and STENEHJEM adding their comments and questions. MAJOR ALAN S. DOHRMANN appeared in behalf of Adjutant General Bjerke. He indicated to the committee that the adjutant general indicated that this language was merely used to put ND in consistency with the federal standards. We do not need the consistency we can do what we want. Removing the adjutant general in section 10 doesn't create any problems for us. As the committee is well aware this is not a section of law that is used. We need to keep it up to date but it is not used. We have no problem if the adjutant general is removed from section 10. I think the committee needs to remember though that this is appellate review if you will. Prior to this decision coming to the adjutant general or the governor's desk, the individual if they are given a dishonorable discharge has already been convicted by a jury. It's not that we are giving this person great discretion. They have a choice of either affirming what the jury did or a unique aspect of military law is that the commanding officer or the commander in chief of federal courts is the president, of the state courts is the governor can say I just don't like what you have done here, I don't think it's worthy of dishonorable discharge. My decision is we are still going to let you go, but we will give you an

1-21-99

honorable discharge. The intent behind this is to give that final reviewing authority the flexibility to go with what he thinks is an appropriate thing. Considering the working relationship that most governors would have with their adjutant general I would not anticipate a problem if this language was in or out. As far as removing it, we would have no problem with that. SENATORS KILZER, DEMERS, and STENEHJEM offered questions and comments. There was no further discussion at this time. The committee decided not to act on the bill at this time.

January 29, 1999---Further Committee Action---Tape 1, Side B, Meter # 5811-6200

SENATOR W. STENEHJEM moved to amend the bill by removing the underlined words or the adjutant general from page 5, line 11. , seconded by Senator DeMers, Roll Call Vote indicated 6 Yeas, 1 NAYS, and 0 Absent or Not Voting. Senator Kilzer indicated he would be voting in opposition to the amendment because of past military experiences and his beliefs that the Adjutant General as Commander in Chief of the state military should be able to carry out court martial sentences. (Tape 2, Side A, Meter #'s 0-285) MOTION for DO PASS AS AMENDED made by SENATOR W. STENEHJEM, seconded by SENATOR KILZER. ROLL CALL VOTE indicated 7 YEAS, 0 NAYS, 0 ABSENT OR NOT VOTING. SENATOR W. STENEHJEM will carry the bill.

Date: Jan. 14, 1999
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2131

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment

Motion Made By Sen W Stenehjem Seconded By Sen. Demers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: Jan 14, 1999
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2131

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen Thane Seconded By Sen. W. Stenehjem

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. W. Stenehjem

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

REPORT OF STANDING COMMITTEE

SB 2131: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2131 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "manual for courts-martial, United States, 1995 edition" with "Manual for Courts-Martial, United States, 1984 (1998 edition)"

Page 2, line 17, overstrike "courts of inquiry and"

Page 2, line 19, replace "manual for courts-martial, United States, 1995 edition" with "Manual for Courts-Martial, United States, 1984 (1998 edition)"

Renumber accordingly

Date: 1/29/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2131

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to Amend

Motion Made By Sen. Stenehjem Seconded By Sen Demers

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH		✓			
SENATOR WARDNER	✓				
SENATOR KILZER		✓			
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment _____

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

Date: 1/29/99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2131

Senate GOVERNMENT AND VETERAN'S AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Stenehjem Seconded By Sen. Kilzer

Senators	Yes	No	Senators	Yes	No
SENATOR KREBSBACH	✓				
SENATOR WARDNER	✓				
SENATOR KILZER	✓				
SENATOR STENEHJEM	✓				
SENATOR THANE	✓				
SENATOR DEMERS	✓				
SENATOR MUTZENBERGER	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Stenehjem

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

REPORT OF STANDING COMMITTEE (410)
February 1, 1999 9:03 a.m.

Module No: SR-20-1546
Carrier: W. Stenehjem
Insert LC: 98073.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2131, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2131 was placed on the Sixth order on the calendar.

Page 5, line 11, remove "or the adjutant general"

Renumber accordingly

1999 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2131

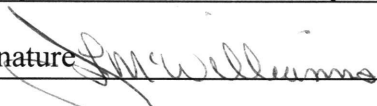
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2131

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2-26-1999

Tape Number	Side A	Side B	Meter #
1	X		6.1 - 13.4
1	X		48.0 - 50.0
Committee Clerk Signature 			

Minutes: Some of the individuals testifying submit written testimony. When noted please refer to it for more detailed information.

Representative Klein, Chairman of the GVA Committee opened the hearing on February 26, 1999.

Summary of the Bill: Relating to application of the uniform code of military justice to the ND national guard and military courts within the ND national guard. Relating to military courts of inquiry and court-martial sentences.

Testimony in Favor:

Major Al Dohrmann, ND national guard submitted written testimony to the committee which he read in it's entirety (**please refer to his testimony**). This is a house keeping measure and not at all controversial. It's been well over 50 years since there has been a court-martial in ND.

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House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2131

Hearing Date 2-26-1999

Representative Klemin, Section 1 those changes your referring to, would there be a reason why you couldn't put in there "and any amendments there to" so you don't have to come back in the future and change the bill again.

Dohrmann, When we read the Supreme Court decisions, we felt whatever that was in existence at the time of passage is what we would abide by. We always deal with the 1984 manual for court martial, even if it's 2002 edition. To some extent we do not have to be tied to the federal system.

Testimony in Opposition: None.

Representative Klein, Closed the hearing on SB 2131.

Committee Action:

Representative Haas, Made a motion for a Do Pass.

Representative Winrich, Seconded the motion.

Motion Passes: Do Pass **14-0-1**.

Representative Thoreson, Is the carrier for the bill.

Date: 2-26-99

Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2131

House GOVERNMENT AND VETERANS AFFAIRS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By HAAS Seconded By WINRICH

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP. WINRICH	✓	
VICE-CHAIR KLINISKE	✓				
REP. BREKKE	✓				
REP. CLEARY	✓				
REP. DEVLIN					
REP. FAIRFIELD	✓				
REP. GORDER	✓				
REP. GRANDE	✓				
REP. HAAS	✓				
REP. HAWKEN	✓				
REP. KLEMIN	✓				
REP. KROEBER	✓				
REP. METCALF	✓				
REP. THORESON	✓				

Total (Yes) 14 No 0

Absent 1

Floor Assignment THORESON

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

REPORT OF STANDING COMMITTEE (410)
February 26, 1999 10:45 a.m.

Module No: HR-35-3651
Carrier: L. Thoreson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2131, as reengrossed: Government and Veterans Affairs Committee (Rep. Klein, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2131 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY
SB 2131

TESTIMONY OF
MAJ ALAN S. DOHRMANN
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

January 14, 1999

9:00 a.m.

SENATE BILL 2131

Madam Chairman, Members of the Committee, good morning.

SB 2131 can best be described as a housekeeping measure to bring the provisions of the North Dakota Century Code governing the administration of military justice in the North Dakota National Guard up-to-date. Not since 1943 has North Dakota passed any laws dealing with the state's courts-martial procedures. Soldiers in the National Guard deployed (Korea, Macedonia, etc.) are typically in a Title 10 status (federal) and are governed by the current edition of the Manual for Courts-Martial (MCM). Updating the Code will provide consistency and ensure that we are positioned to handle any misconduct in an effective and appropriate manner.

Sections one and three of the Bill provide clear guidance in regard to applicable procedures that need to be followed in courts-martial. Our current law references the "uniform code of military justice governing the armed forces of the United States" as the standard to follow. This document is currently codified in the Manual for Courts-Martial, United States, 1984 (1998 edition). Based on a recent North Dakota Supreme Court decision (McCabe v. North Dakota Workers Compensation Bureau, 567 N.W.2d 210 (N.D. 1997)), we believe our law must be specific when it adopts, by reference, any procedure or guide, such as the Manual for Courts-Martial. This Bill incorporates by reference the current version of the Manual for Courts-Martial. Adopting the current edition should take care of our needs for the foreseeable future.

The other sections of this Bill also bring our military justice procedures up to date. Section two eliminates Courts of Inquiry, making our law consistent with the federal Manual for Courts-Martial. Sections four, five and six deal with the different types of courts-martial. The amendments clean up some of the language in these sections, and increase the potential fines that may be assessed as punishment from \$200 to \$500 for a General Courts-martial, \$100 to \$300 for a Special Courts-Martial, and \$25 to \$100 for a Summary Courts-martial. We believe these fines are consistent with our state's criminal courts.

This Bill also addresses who is empowered to convene a courts-martial. It expands convening authority power for a general courts-martial, granting the power to both the Governor and the Adjutant General. This change gives the Adjutant General the power he needs, as the chief military officer of the state, to enforce our state's Uniform Code of Military Justice. For special and summary courts-martial, it sets the level at Colonel or above. This change ensures that decisions about courts-martial are made only by those officers of sufficient position and grade (Colonel or higher).

Finally, this bill repeals two outdated statutes which address the use of Courts of Inquiry, a form of military courts-martial that is no longer used in the federal system.

As stated above, this Bill is a housekeeping matter. The changes that have occurred in our state law, coupled with the changes that have occurred in the federal Manual for Courts-Martial, dictate that we update our courts-martial procedures. We need to have up-to-date procedures in case the need arises and to ensure consistency for our soldiers.

I would be pleased to respond to any questions, Madam Chairman.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2131

Page 1, line 13, replace “manual for courts-martial, United States, 1995 edition” with “Manual for Courts-Martial, United States, 1984 (1998 edition)”

Page 2, line 17 overstrike “courts of inquiry and”

Page 2, line 19, replace “manual for courts-martial, United States, 1995 edition” with “Manual for Courts-Martial, United States, 1984 (1998 edition)”