

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

HB 1223

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

HB 1223
2/8/2019
32484

- Subcommittee
 Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the powers of the highway patrol to exercise general police powers

Minutes:

Attachments 1, 2

Chairman Kasper opened the hearing on HB 1223.

Rep. Pat Heinert appeared in support. This is a bill to provide the ND Highway Patrol with the authority to respond to calls outside the highway system in ND. HB 1223 provides the ND Highway Patrol with the authority to respond to an emergency call no matter the location. By providing this authority to the ND Highway Patrol, we are increasing the response from law enforcement to our citizens.

Vice Chair Steiner: During the DAPL protest weren't highway patrolmen used there and off state highways? Is this actually a practice that goes on and we are trying to codify it?

Rep. Heinert: The highway patrol was requested by Morton County Sheriff's Department to assist. Under the request they could act appropriately which is in state law right now. Under current law, they can't physically respond unless they are requested to.

Rep. Laning: My understanding is that all highway patrolmen are licensed law enforcement officers in the state. I thought they all had legal jurisdiction throughout the state once they obtained their license.

Rep. Heinert: That causes us a conflict, because under their peace officers' license, they do take an oath of office to be a law enforcement officer. Under the century code, we do not provide that authority to the highway patrol to do 100% of all law enforcement duties outside the boundaries of the highway.

Rep. Rohr: Was there input from the other law enforcement agencies for this bill?

Rep. Heinert: We met specifically with the highway patrol back in October. We took it to the Sheriffs and Deputies Association for their input. We also took it before the Chiefs of Police Association for their notification and support.

Rep. Rohr: How about the reservation?

Rep. Heinert: I believe the highway patrol was talking to the reservations through the liaison officer that they have.

Rep. Schauer: Is there an issue here with training?

Rep. Heinert: They do receive the same training that all other law enforcement in the state receives. They just continue on to gain expertise in traffic accidents, truck regulatory, and specific other functions like the federal government side.

Rep. Schneider: Notification must be provided to local law enforcement having primary jurisdiction. Anything specific envisioned in that?

Rep. Heinert: That is talking about the report. In case this local enforcement entity is in some small community and the sheriff can't get there, the highway patrol will complete the entire call, do the report, and send a copy to the sheriff's department so they know what happened in that location.

Vice Chair Steiner: It just takes a brief radio call to say can I have permission to go in. Why would we need this now?

Rep. Heinert: There is some risk management issues under the current that Colonel Solberg will talk to you about.

Brandon Solberg, Superintendent of ND Highway Patrol, appeared in support. Attachment 1. (7:25-12:06)

Attachment 2 was handed out to the committee by the law intern.

Vice Chair Steiner: Is this coming from advice from your risk manager or from an audit?

Mr. Solberg: This is a result of our own agency's review of duties. Because our assist other government calls have been steadily increasing, that is one reason it came to light. We want to be sure the services we are providing today are actually covered and authorized by law. The second piece came because of pending litigation.

Rep. Rohr: The current statute says your staff can respond for only emergency situations but upon request by the local law enforcement.

Mr. Solberg: That is correct, and that was one of the issues. It uses the word request. Once we hear of a call by radio, we would like to have the authority to respond and provide that help.

Rep. Rohr: This is only for emergency situations?

Mr. Solberg: Section 1 is for non-emergency calls for service, but that does require a specific request from a law enforcement agency, and that is normally for a limited duration.

Rep. Rohr: Could you address the issue of the reservation.

Mr. Solberg: We have very limited jurisdiction on tribal reservations because they are sovereign nations. Through our cultural liaison officer program, we are trying to develop relationships so that we can get MOUs in place to be able to provide supplemental law enforcement service. Once those agreements are in place, then I would say this authority will help us out.

Rep. Rohr: Did you receive any negative feedback from those associations and organizations you met with?

Mr. Solberg: Yes, at first. He explained about the Wells County situation and ended up removing the political subdivision language. We also didn't originally have the reporting requirement.

Rep. Rohr: There must be a debriefing after these kinds of situations when they occur, so there is additional feedback and if there is any concern with the response that your people would incur? Is that written into this too?

Mr. Solberg: My initial reaction to this was that it wasn't required in law that we would have this in our policy. The concern from some of the sheriffs was we may trust you today, but superintendents change and policies change. Then I was okay putting that in law. As far as how this reporting occurs, we would provide a copy of our report or summary of what occurred. Debriefings sometimes occur with a major incident.

Rep. Vetter: Doesn't this bill in essence change you from the highway patrol to the state patrol?

Mr. Solberg: In law we are called the State Highway Patrol, so I know there is sensitivity to the state police concept. The criminal piece of it is handled by BCI under the attorney general. The highway patrol is traffic enforcement, but because we receive the same training as any peace officer, we are willing to provide that local assistance.

Rep. Rohr: Is there a possibility you will be asking for more FTEs down the road?

Mr. Solberg: That answer relies on local resources. If local resources were very strained and we were being relied more and more, that is a potential, but it would depend on local resources being properly funded or not.

Vice Chair Steiner: If you are in a rural area and within a short distance of an incident, right now you would call the sheriff and ask if you can help? With this law, you would not have to make the call first, but would take care of the incident?

Mr. Solberg: Yes, that is correct.

Vice Chair Steiner: If you see somebody rustling cattle off in the pasture as you are driving down the highway, you see it as an emergency, then you would be able to drive over and arrest those individuals? My question is the expansion of power here.

Mr. Solberg: If we heard of a call of someone potentially committing theft and we were in the area, we would respond today and try to provide any assistance law enforcement wise, because we are licensed peace officers.

Vice Chair Steiner: Is the call on the radio your permission to go to the site, or is it the call that your officer makes to the sheriff to say can I go in and help with this case?

Mr. Solberg: This is a call where we are notified of an emergency that is occurring. We would be able to respond to provide assistance.

Rep. C. Johnson: I don't know if the highway patrol would respond if they saw somebody out in the field chasing cattle at night?

Mr. Solberg: I guess I don't know of a call where we have witnessed something like that and gone to investigate, but if we thought something suspicious was occurring we probably would check into it and if it turned out you are the landowner, do you need any help and have a good night.

Donnell Preskey, ND Association of Counties, appeared in support. I serve as the executive director for the ND Sheriffs and Deputies Association. We were very involved in getting the bill to this point. The sheriffs did have some concerns originally, and we have been at the table with the highway patrol, and they are supportive of the bill as it is now.

Rep. Johnston: Did you happen to get any feedback from the Barnes County and Ransom County sheriffs?

Donnell Preskey: The sheriffs were in attendance at our October meeting and discussed this. I can't remember if those two sheriffs weighed in. Then we have several discussions more limited to our legislative committee where we work through a lot of these policy issues.

Chairman Kasper closed the hearing.

Rep. Laning made a motion for a DO PASS.

Rep. Schneider seconded the motion.

Rep. Vetter: I am going to oppose the motion. I think this is too big of an expansion of power. They already have the ability to help out the locals.

Vice Chair Steiner: I am going to resist too. I would like to visit with my sheriff first. I want to make sure it isn't an expansion of power.

Rep. Johnston: I am going to resist the motion as well. I do think that this is an expansion of power. I don't think the folks back in my district going to appreciate it necessarily, and I would certainly like to speak to the sheriffs in my district.

Chairman Kasper: I think it is more a clarification of what is already there. I am going to support this motion.

Rep. Schauer: I fully support this motion. Law enforcement has to work together. If there is an emergency, they shouldn't have to call somebody. They should go right away.

A roll call vote was taken. 8-5, 1 absent.

Rep. Laning will carry the bill.

Date: 2-8-19
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1223**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Laning Seconded By Rep. Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	X	
Vice Chair Vicky Steiner		X	Rep. Mary Schneider	X	
Rep. Jeff Hoverson	A				
Rep. Craig Johnson	X				
Rep. Daniel Johnston		X			
Rep. Karen Karls	X				
Rep. Ben Koppelman		X			
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Karen Rohr		X			
Rep. Austen Schauer	X				
Rep. Steve Vetter		X			

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Laning

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

REPORT OF STANDING COMMITTEE

HB 1223: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING).
HB 1223 was placed on the Eleventh order on the calendar.

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1223

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

HB1223
3/14/2019
#33696

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to the powers of the highway patrol to exercise general police powers.

Minutes:

Att #1 –Rep Heinert; Att #2 –Brandon Solberg;

Chairman Davison: Call to order. Attendance was taken and all were present. Let's open the hearing on HB1223.

Rep. Pat Heinert, Dist.32, Bismarck: (see att #1) I am here to introduce HB1223. This bill gives them authority to be like the police. This bill is long overdue. Any questions?

Chairman Davison: Why now? We have had this opportunity before.

Rep. Heinert: The House was concerned about outreach authority. DAPL proved problematic because Highway Patrol lacked authority.

Brandon Solberg, Superintendent of N.D. Highway Patrol: Her in support of HB1223. (see att # 2) (6.30-14.18) This bill has a lot of clean up language. We get asked to take over for police when there is a funeral in another city. All the police leave and go elsewhere and the highway patrol does the police for the city. We looked at Code and we don't have that authority. One portion of the bill only changes one word; 'request' to 'call'. This removed confusing language. (9.28) The amendment does not change the intent of the subsection or language. Troopers go through 12 weeks of police officer training and then go an additional 12 weeks. We do have the training to be peace officers. Any questions?

Sen. Richard Marcellais: Back in 2009 legislation, I was asked to go to a meeting about jurisdiction. Can you tell the powers of the Highway Patrol on reservations?

Brandon: That is a big topic right now. We think BIA should have similar authority. A recent N.D. Supreme Court decision, Olson vs DOT. If you are working on a reservation, you have authority on highways but that is civil regulatory. The moment it turns criminal; we have zero authority. We are sitting today in conflict. We need agreements to at least contain individuals until BIA gets there, that would help. State law allows us to enter into an agreement with tribal nations. We need to get to the right people. We are in a gray area, today.

Donnell Preskey, Ex. Director, Sheriff's Assoc.: We are in support. The sheriffs were at the table when this bill was put together. (17.36)

Rep. Kim Koppelman, Dist. 13, W. Fargo: I wanted to show my support for this bill. The Judiciary committee has done this for other entities in the past. We did it for border patrol people. We did it for BIA agents this session. I was very surprised we have not done this before. Please DO PASS. (19.15)

Vice Chair Meyer: I think we passed Sen Armstrong's bill last session for UND when there was a pursuit in downtown Grand Forks.

Rep. Koppelman: You are correct. We did pass one for jurisdiction for campus police.

Chairman Davison: Any agencies? Any against? We are closed. What are the committee wishes?

Sen. Jay Elkin: I move a DO PASS

Sen. Shawn Vedaa: I second.

Chairman Davison: Discussion? Seeing none, take roll: **YES -- 7 NO -- 0 -0-absent**
HB1223 PASSED. Sen. Jay Elkin will carry the bill.

Done (20.22)

3-14-19

Date:
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES HB 1223
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Elkin Seconded By Sen. Vedaa

Senators	Yes	No	Senators	Yes	No
Chair Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	/	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Elkin

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

REPORT OF STANDING COMMITTEE

HB 1223: Government and Veterans Affairs Committee (Sen. Davison, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1223 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1223

#1
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House Bill 1223
House Government and Veterans Affairs Committee
Representative Jim Kasper, Chairman
February 8, 2019

Good morning Mr. Chairman and members of the committee. My name is Brandon Solberg, superintendent of the North Dakota Highway Patrol, and I am here in support of House Bill 1223.

This bill is the result of a collaborative effort between the highway patrol and other local and state law enforcement agencies to match the highway patrol's jurisdiction in century code with the services being requested and provided by our agency. The highway patrol met with representatives from the ND Sheriffs and Deputies Association, the ND Police Chiefs Association, Game & Fish, and the Bureau of Criminal Investigation to discuss highway patrol jurisdiction, and the results are shown in this bill.

The first portion would add a new subsection to the powers of the highway patrol to allow troopers to provide general law enforcement services on public and private property when requested by a law enforcement agency for a limited duration. Currently, the highway patrol has authority to respond to emergency situations on private property upon request, but our jurisdiction is limited to state owned or leased property and highways for non-emergency calls. This new subsection would allow the highway patrol to provide supplemental law enforcement services when local resources are unavailable.

The highway patrol has been called in the past to provide general law enforcement services. One example occurred in Wells County in 2017 when there was no sheriff or deputy available. Wells County asked the highway patrol to provide basic law enforcement services until a sheriff was selected, and we agreed to do so. The highway patrol has also provided law enforcement coverage for police and sheriff's departments during officer funerals and training days.

The second portion of the bill amends subsection 12 of NDCC 39-03-09 by removing the limitation on jurisdiction for crimes that occur in a trooper's presence. This would allow troopers to take action on any crime that occurs in their presence which matches the authority of every private person in North Dakota. NDCC 29-06-20 states the following:

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A private person may arrest another:

- 1. For a public offense committed or attempted in the arresting person's presence.*

If you and I were sitting at a local restaurant today and an armed robbery occurred, you'd have more authority as a private person to make an arrest than I would as a state trooper. The public would likely assume a trooper in a uniform has the authority to make an arrest outside of the highway right-of-way, and this amendment would clear up that issue.

The third portion of the bill changes one word from "request" to "call" and removes confusing language from subsection 16 of NDCC 39-03-09. I don't believe this amendment changes the intent of the subsection, but it clears up any confusion about the need to specifically request the help of a state trooper during an emergency. When an emergency event is occurring such as a bar fight or an active threat situation, there is not always time to reach out and make specific requests for assistance by agency type. This change would allow troopers to respond to any emergency call. If for some reason the trooper ends up covering a call from beginning to end without any local involvement, the highway patrol would be required to notify the local agency having primary jurisdiction.

This third portion covers emergency calls for service whereas the first portion covers non-emergency calls for service. In 2018, the highway patrol responded to 14,000 direct calls for service and assisted other government agencies with 3,186 calls. State troopers are assisting local agencies over eight times a day on average, and this bill would help to ensure our daily activities are clearly authorized by law. Some city and county law enforcement agencies are small, and the highway patrol would like to continue to provide supplemental law enforcement services to maintain public safety statewide.

This bill language was reviewed by our legal counsel and the risk management division director within the office of management and budget, and there were no issues.

Mr. Chairman and members of the committee, this concludes my testimony, and I'd be happy to answer any questions.

CHAPTER 39-03
HIGHWAY PATROL

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39-03-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Assistant superintendent" means the assistant highway patrol superintendent.
2. "Patrolmen" means the members of the highway patrol including the superintendent and the assistant superintendent.
3. "Superintendent" means the state highway patrol superintendent.

39-03-02. State highway patrol superintendent appointed by governor - Duties.

The governor shall appoint a state highway patrol superintendent who shall enforce the provisions of the laws of this state relating to the protection and use of the highways in this state and the operation of motor and other vehicles upon such highways.

39-03-03. Patrolmen - Appointment - Removal - Duties.

The superintendent, the assistant superintendent, and the patrolmen constitute the highway patrol. The highway patrol shall enforce the provisions of the laws of this state relating to the protection and use of highways and shall patrol the highways and cooperate with sheriffs and police in enforcing the laws regulating the operation of vehicles and the use of highways. All patrolmen and the assistant superintendent must be appointed by the superintendent. Each patrolman so appointed is deemed a temporary appointee for a period of twelve months, during which period the patrolman must be placed under probationary training and service and is subject to dismissal at the will of the superintendent. At the end of the twelve-month period, a temporary appointee must either be given a permanent appointment by the superintendent or must be automatically dismissed. The assistant superintendent and patrolmen who have received a permanent appointment are subject to removal for cause by the superintendent, but must be permitted to appeal a dismissal under chapter 54-44.3, provided that the removal of the assistant superintendent from that person's position does not entitle that person to appeal the removal unless that person is also dismissed from the patrol.

39-03-04. Qualifications of patrolmen - Veterans have preference.

No person may be appointed as a patrolman unless the person has all of the following qualifications:

1. Has passed such physical examination and such other qualification test as may be required by the superintendent.
2. Is of good moral character and temperate habits.
3. Has been a citizen of the United States for not less than two years prior to the appointment.

Preference for appointment must be given at all times to honorably discharged veterans and citizens of the state of North Dakota, and all appointments must be made without regard to any political party affiliation of the applicant.

39-03-05. Badge issued to patrolmen - Contents of badge.

The superintendent shall issue to each patrolman a badge of authority with the seal of this state in the center thereof. The term "North Dakota patrol" must encircle such seal and above the same must appear the designation of the position held by the person to whom such badge is issued. Each such badge must contain a unit number or symbol of rank. No badge may be issued to any person who is not a duly appointed and acting member of the highway patrol.

39-03-06. Oath required of superintendent, assistant superintendent, and patrolmen.

The superintendent, assistant superintendent, and each patrolman, before entering upon the performance of the person's duties, shall take and file the oath prescribed by law for state officers.

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39-03-07. Salary of superintendent - Limitations.

The salary of the superintendent must be within the amount appropriated for salaries by the legislative assembly. The salary of the assistant superintendent and each patrolman must be fixed by the superintendent, and must be paid in the same manner as other state employees are paid.

39-03-08. Manner of paying salaries, wages, and expenses of highway patrol.

All salaries, wages, and other expenses of the highway patrol must be paid by the office of management and budget and state treasurer out of the patrol fund, upon vouchers required by law for the payment of all state expenses, duly approved by the superintendent, and audited and allowed by the office of the budget.

39-03-08.1. Contracts - Bids.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.2. Requests for bids - How advertised.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.3. Bids - Requirement.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.4. Checks of three lowest bidders retained.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-08.5. Award of contracts - Bond.

Repealed by S.L. 1999, ch. 332, § 1.

39-03-09. Powers of highway patrol.

The superintendent and each member of the highway patrol shall have the power:

1. Of a peace officer for the purpose of enforcing the provisions of this title relating to operators' licenses, the provisions of title 24 relating to highways, and of any other law regulating the operation of vehicles or the use of the highways, and in addition the highway patrol shall enforce all laws relating to the use or presence of alcoholic beverages in motor vehicles.
2. To make arrests upon view and without warrant for any violation committed in the person's presence of any of the provisions of this title relating to operators' licenses, or of title 24 relating to highways or to other laws regulating the operation of vehicles or the use of the highways.
3. To direct traffic in conformance with law, or, in case of fire or emergency and to expedite traffic, or, to ensure safety by directing traffic as conditions may require notwithstanding the provisions of law.
4. To facilitate compliance with the provisions of this title, to require the driver of a vehicle to stop and exhibit the driver's operator's license and the registration cards issued for the vehicle, if any are required, and to submit to an inspection and test of the equipment of such vehicle.
5. For the purpose of locating stolen vehicles and to investigate the title and registration thereof, to inspect any vehicle of a type required to be registered under the provisions of this title, in any public garage or repair shop, or in any place where such vehicles are held for sale or wrecking.
6. To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.
7. To investigate traffic accidents and secure testimony of witnesses or of persons involved.
8. To investigate reported thefts of motor vehicles, trailers, or semitrailers.
9. To take applications for operators' licenses without making a charge therefor.

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10. To enforce all laws, rules, or regulations of the state of North Dakota pertaining to the closing hours of all businesses or establishments selling alcoholic beverages outside the limits of incorporated cities of this state.
11. To exercise general police powers over all violations of law committed on state owned or leased property.
12. To exercise general police powers over all violations of law committed in their presence upon any highway and within the highway right of way or when in pursuit of any actual or suspected law violator.
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.
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.
16. Of a peace officer when responding to a request for emergency assistance requiring an immediate response regardless of whether the request is being made by another law enforcement agency or officer.
17. To promote public trust and an understanding of law enforcement through education, community outreach, and job shadowing programs.

39-03-10. Patrolmen to inspect motor vehicles - Report violations.

Repealed by S.L. 1967, ch. 296, § 2.

39-03-11. Penalty for impersonating patrolman.

Any person is guilty of a class A misdemeanor if:

1. Without authority, the person wears the badge of a member of the highway patrol, or a badge of similar design which would tend to deceive anyone;
2. The person impersonates a member of the highway patrol or other officer or employee of the highway patrol with intent to deceive anyone; or
3. Without authority, the person wears a uniform likely to be confused with the official uniform of the highway patrol.

39-03-12. Penalty in violation of chapter.

Any person who violates any of the provisions of this chapter, for which another penalty is not specifically provided, is guilty of a class B misdemeanor.

39-03-13. Additional powers of superintendent.

In addition to the superintendent's powers as a member of the highway patrol, the superintendent of the patrol has the following powers as administrative head of the patrol:

1. The superintendent may organize the patrol into divisions, bureaus, and districts as the superintendent deems necessary.
2. The superintendent may designate ranks, fix salaries with appropriate allowances for those ranks, and establish promotional procedures.
3. The superintendent may take reasonable disciplinary action against members of the patrol for inefficiency, misconduct, insubordination, or violation of an established rule, whenever the superintendent deems the actions necessary, provided that:
 - a. When demotion in rank is summarily ordered against a member of the patrol as a disciplinary measure, to be limited to a one-grade reduction in rank, the order is appealable under chapter 54-44.3.
 - b. When a reduction in pay of a member of the patrol is summarily ordered as a disciplinary measure, it must be limited to one year's duration and the order is appealable under chapter 54-44.3.

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- c. Suspension of pay for a member of the patrol for a period not exceeding seven days may be summarily ordered as a disciplinary measure, but an order for suspension of pay for a longer period is appealable under chapter 54-44.3.
- 4. A suspension of pay for a member of the patrol may be summarily ordered not more than twice in one year as separate disciplinary measures, except that further suspensions are appealable under chapter 54-44.3.

39-03-13.1. Law enforcement training center - Training conducted.

The superintendent of the highway patrol is responsible for the operation, maintenance, and administration of the law enforcement training center. The superintendent shall appoint a director of the training center who is responsible for coordinating basic and advanced peace officer training and such other duties as may be prescribed by the superintendent. All peace officer training which is conducted at the law enforcement training center shall meet the certification criteria established by the peace officer standards and training board and must be in accordance with the basic and advanced peace officer curriculum established by the peace officer standards and training board.

39-03-13.2. Silver alert notice system.

The superintendent, in cooperation with the bureau of criminal investigation and the division of state radio of the department of emergency services, shall establish a silver alert notice system to activate an urgent bulletin using the emergency alert system to air a description of a disabled adult or vulnerable elderly adult as defined in section 12.1-31-07 or a minor who has a developmental disability as defined in section 25-01.2-01, who has been reported to law enforcement as missing and to aid in the location of that individual.

39-03-14. Disciplinary board of review.

Repealed by S.L. 1971, ch. 352, § 3.

39-03-15. Radar evidence in speed violations.

The speed of any motor vehicle may be checked by the use of radio microwaves or other electrical device. The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue. The driver of any such motor vehicle may be arrested without a warrant under this section, provided the arresting officer is in uniform or displays the officer's badge of authority; provided that such officer has observed the record of the speed of such motor vehicle by the radio microwaves or other electrical device, or has received a radio message from the officer who observed the speed of the motor vehicle recorded by the radio microwaves or other electrical device. Nothing herein shall affect the powers of cities or towns to adopt and use such device to measure speed.

39-03-16. Safety division created - Director.

There is hereby created a safety division within the state highway patrol for the purpose of reducing the danger of travel on the highways, roads, and streets of this state, the number of motor vehicle accidents with resultant loss of lives, personal injuries, and property damage, and encouraging better law enforcement, more uniform penalties, safe driving practices, and public adherence to traffic safety laws, through public education, information, and support.

The director of the safety division must be appointed by the superintendent in accordance with sections 39-03-03 and 39-03-04, and possessing such qualifications by education or experience in the field of highway safety as the superintendent shall determine. The director shall receive such compensation as may be determined by the superintendent.

39-03-17. Powers and duties of director of the safety division.

The director of the safety division, under the supervision of the highway patrol superintendent, shall direct and carry on a public education and information program and assist and cooperate with all governmental or private agencies, organizations, or groups in order to

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encourage better and safer driving practices, better law enforcement, and more uniform penalties, for the purpose of reducing the number of motor vehicle accidents.

The director shall coordinate and strengthen the highway and traffic safety activities of the state of North Dakota and its political subdivisions. The director shall specifically promote the coordination of the functions of driver licensing and control, financial responsibility, traffic law enforcement, and other highway and traffic safety activities of the state highway patrol and the department of transportation, and shall generally work and cooperate with the officials in charge of these departments and all public officials in all matters relating to motor vehicle safety.

All supplies and equipment of the public safety division of the department of transportation are hereby transferred to the public safety division of the highway patrol created by section 39-03-16.

39-03-18. Highway patrol - Assets forfeiture fund - Purpose - Continuing appropriation.

There is created a fund to be known as the highway patrol assets forfeiture fund. The fund consists of funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. The total amount of deposits into the fund may not exceed three hundred thousand dollars within a biennium and any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated as a continuing appropriation to the highway patrol for the following purposes:

1. For paying expenses necessary to inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited, pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of the property.
2. For paying overtime compensation incurred as a result of investigations or violations of any state criminal law or law relating to the control of drug abuse.
3. For purchasing equipment related to criminal interdiction.
4. For paying matching funds required as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation or apprehension of persons violating the provisions of chapter 19-03.1.

The superintendent of the highway patrol, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for the use of the fund and shall personally approve, in writing, all requests for the use of the fund.

39-03-19. Capitol building access card fund - Continuing appropriation.

There is created in the state treasury a capitol building access card fund. The fund consists of any fees received by the superintendent for the issuance of capitol building access cards. The superintendent shall establish policies regarding the issuance of capitol building access cards and may charge a fee of ten dollars for each access card issued to an individual who is not an employee of the state of North Dakota. All moneys in the fund are appropriated to the highway patrol on a continuing basis for costs associated with the issuance of capitol building access cards and capitol complex security needs.

HB 1223

Rep. Heinert

*HB 1223
3-14-19
AH #1
psl*

Good Morning Chair Davidson and members of the Senate Government & Veterans Affairs Committee:

HB 1223 is a bill to provide the ND Highway Patrol with the authority to respond to calls for assistance outside of the highway system in North Dakota.

Currently under NDCC 39-03-09 the Highway Patrol can only respond to calls for assistance within the highway system unless they are requested by local law enforcement for assistance. This is contrary to the oath they took when they were sworn in as a law enforcement officer for the State of North Dakota. When a law enforcement officer takes an oath of office to receive their peace officer's license, they swear to uphold the Constitution of the United States and North Dakota.

HB 1223 provides the NDHP with the authority to respond to an emergency call no matter of the location. By providing this authority to the Highway Patrol we are increasing the response from law enforcement to our citizens. This bill is good for the State of North Dakota and law enforcement in general.

The Colonel of the Highway Patrol is here to explain this bill in much more detail.

This is a good bill that is long overdue.

I appreciate your support for North Dakota law enforcement, this bill will strengthen that support.

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Mr. Chair I would stand for any questions.

Thank You.

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House Bill 1223
Senate Government and Veterans Affairs Committee
Senator Kyle Davison, Chairman
March 14, 2019

Good morning Mr. Chairman and members of the committee. My name is Brandon Solberg, superintendent of the North Dakota Highway Patrol, and I am here in support of House Bill 1223.

This bill is the result of a collaborative effort between the highway patrol and other local and state law enforcement agencies to match the highway patrol's jurisdiction in century code with the services being requested from and provided by our agency. The highway patrol met with representatives from the ND Sheriffs and Deputies Association, the ND Police Chiefs Association, Game & Fish, and the Bureau of Criminal Investigation to discuss highway patrol jurisdiction, and the results are shown in this bill.

The first portion would add a new subsection to the powers of the highway patrol to allow troopers to provide general law enforcement services on public and private property when requested by a law enforcement agency for a duration determined by the requesting agency. Currently, the highway patrol has authority to respond to emergency situations on public and private property upon request, but our jurisdiction for non-emergency calls is limited to state owned or leased property and roadways open to the public. This new subsection would allow the highway patrol to provide basic law enforcement services when local resources are unavailable.

In the past, the highway patrol has been asked to provide general law enforcement services. One example occurred in Wells County in 2017 when there was no sheriff or deputy available. Wells County asked the highway patrol to provide basic law enforcement services until a sheriff was selected, and we agreed to do so. Also, the highway patrol has provided law enforcement coverage for police and sheriff's departments during officer funerals and training days.

The second portion of the bill amends subsection 12 of NDCC 39-03-09 by removing the limitation on jurisdiction for crimes that occur in a trooper's presence. This would allow troopers to take action on any crime that occurs in their presence which matches the authority of every private person in North Dakota. NDCC 29-06-20 states the following:

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Pg 2

A private person may arrest another:

- 1. For a public offense committed or attempted in the arresting person's presence.*

If you and I were sitting at a local restaurant today and an armed robbery occurred, you'd have more authority as a private person to make an arrest than I would as a state trooper. The public would likely assume a trooper in a uniform has the authority to make an arrest outside of the highway right-of-way, and this amendment would clear up that issue.

The third portion of the bill changes one word from "request" to "call" and removes confusing language from subsection 16 of NDCC 39-03-09. I don't believe this amendment changes the intent of the subsection, but it clears up any confusion about the need to specifically request the help of a state trooper during an emergency. When an emergency event is occurring such as a bar fight or an active threat situation, there is not always time to reach out and make specific requests for assistance by agency type. This change would allow troopers to respond to any emergency call. If for some reason the trooper ends up covering a call from beginning to end without any local involvement, the highway patrol would be required to notify the local agency having primary jurisdiction.

This third portion covers emergency calls for service whereas the first portion includes non-emergency calls for service. In 2018, the highway patrol responded to 14,000 direct calls for service and assisted other government agencies with 3,186 calls. State troopers are assisting local agencies over eight times a day on average, and this bill would help to ensure our daily activities are clearly authorized by law. Some city and county law enforcement agencies are small, and the highway patrol would like to continue to provide supplemental law enforcement services to help maintain public safety statewide.

This bill language was reviewed by our agency's legal counsel and the risk management division director within the office of management and budget, and there were no issues.

Mr. Chairman and members of the committee, this concludes my testimony, and I'd be happy to answer any questions.

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House Bill 1223
Senate Government and Veterans Affairs Committee
Senator Kyle Davison, Chairman
March 14, 2019

Law Enforcement Contacts

- **September 18, 2018**
 - Met with Sheriff Pat Heinert (Burleigh County) and visited with Chief David Todd (Fargo) about the proposed language seeking feedback
- **September 27, 2018**
 - Met with the executive director of the North Dakota Sheriffs & Deputies Association seeking feedback
- **October 7, 2018**
 - Presented draft language to the North Dakota Sheriffs & Deputies Association seeking feedback
 - **Revision #1** resulted in the addition of “a law enforcement agency, or in the absence of a law enforcement agency, a political subdivision”
- **November 9, 2018**
 - E-mail sent to all chiefs and sheriffs along with Game & Fish, Bureau of Criminal Investigation, and Department of Corrections and Rehabilitation with revised language seeking feedback
- **November 29, 2018**
 - Met with the ND Sheriffs & Deputies Association executive board and representatives from Game & Fish and the Bureau of Criminal Investigation
 - **Revision #2** resulted in the removal of the political subdivision term and the addition of a requirement to notify the local agency having primary jurisdiction if an emergency call is covered without any local involvement
- **December 17, 2018**
 - Presented the revised language to a combined meeting of the Police Chiefs and Sheriffs & Deputies Associations, and no additional changes were recommended
 - The Police Chiefs Association voted unanimously to endorse the proposed language on December 18, 2018
- **January 21, 2019**
 - Sheriff Jesse Jahner from the Cass County Sheriff’s Office submitted a letter of support for House Bill 1223
- **February 20, 2019**
 - E-mail sent to all chiefs and sheriffs along with Game & Fish, Bureau of Criminal Investigation, and Department of Corrections and Rehabilitation with the bill and testimony provided to the House Government and Veterans Affairs Committee



www.casscountynd.gov

Office of the Sheriff

Jesse Jahner, Sheriff

HB 1223

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PS

January 21st, 2019

I, Jesse Jahner Sheriff of Cass County North Dakota, am writing in support of House Bill 1223 to create and enact a new subsection to section 39-03-09 of the North Dakota Century Code relating to the powers of the highway patrol to exercise general police powers; and to amend and reenact subsections 12 and 16 of section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol.

In Cass County, we have a very good working relationship with the North Dakota Highway Patrol and often times work very closely with them. Working in a rural environment, response times to those who need assistance can be somewhat lengthy given a Deputy\Officers location. There may be times where a Highway Patrol Officer may be closer in proximity to an incident than our Deputies are and could respond given the authority. We can provide better public safety and service if we have more resources available and can decrease response times to those locations and individuals. This bill will allow for these considerations and increase public safety throughout the State of North Dakota. I support House Bill 1223.

Sincerely,

Jesse Jahner

Cass County Sheriff

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