

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2103

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

SB2103
1/4/2019
30417

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

A bill relating to Highway Patrol probationary employees.

Minutes:

Att #1- Major Aaron Hummel

Chairman Davison: I call this hearing to order. All members present.

Major Aaron Hummel, Chief of Staff, Highway Patrol : (see attached #1) (5.08 ended)

Chairman Davison: So you don't fall under the HR system of the state?

Aaron: We do but we have additional powers under 39.03 Code. That deals with our powers of the superintendent. We are trying to get in line of administrative code.

Chairman Davison: What happened in order for you to be here today as opposed to 2013 or other sessions? Why did your attorney look at it?

Aaron: We had gone a recent termination which brought a new attorney into the mix. He went through the statute. He felt it was best to get them in line. We are gaining anything since we have operated under the area now.

Chairman Davison: Probationary probably means a little more temporary which means something different in HR system in state. I see that. Have you taken these changes to HR and the state?

Aaron: HR has seen them and other attorneys in Attorney General's Office. (7.51)

Sen. Kristin Roers: Why do you have the separate rather than following the HR process?

Aaron: Law enforcement has been viewed as having to need that extra discipline to keep things in line. We can potentially take someone's life at some point. The system needs to be enhanced to allow this agency to take the disciplinary matter dealt with internally. This stream lines the process.

Chairman Davison: Thank you. Any questions? Any more for bill? Any against? Seeing none this hearing is closed. What are the committee wishes?

Sen. Kristin Roers : I move a DO PASS. Seconded by Vice Chair Meyer. Clerk called the roll.

7 YES -0- NO -0- absent. SB2103 PASSED Sen. Erin Oban will carry the bill.

Chairman Davison: We are adjourned.

Date: 1/4/19
Roll Call Vote #: /

2019 SENATE STANDING COMMITTEE

ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2103

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. Roers Seconded By Vice Chair Meyer

Senators	Yes	No	Senators	Yes	No
Chairman Davison	/		Senator Marcellais	/	
Vice Chairman Meyer	/		Senator Oban	/	
Senator Elkin	/				
Senator Roers	/				
Senator Vedaa	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Oban

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

REPORT OF STANDING COMMITTEE

SB 2103: Government and Veterans Affairs Committee (Sen. Davison, Chairman)
recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2103 was placed on the Eleventh order on the calendar.

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2103

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union Room, State Capitol

SB 2103
3/8/2019
33464

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to patrolmen being deemed probationary employees for a period of up to 12 months; relating to the power of the superintendent to delegate authority for disciplinary action within the highway patrol

Minutes:

Attachment 1

Chairman Kasper opened the hearing on SB 2103.

Sara Leno, Human Resource Manager for the ND Highway Patrol, appeared in support.
Attachment 1. (2:11-7:55)

Rep. Rohr: Page 1, Line 22 you talk about non probationary employees. Is that considered the temporary then?

Sara Leno: Non probationary employees would be regular employees. They would have passed their probationary status and became permanent employees of the state.

Rep. Rohr: Page 2, Line 2 you talk about the assistant superintendent. Could you explain that.

Sara Leno: In century code there is a part where we do have the authority to use an assistant superintendent if we so choose. Right now we do not have one, so we want to add the words superintendent's designee.

Vice Chair Steiner: Currently, do you have due process?

Sara Leno: We do have due process. However, the superintendent makes the final decision, and if they appeal it, it goes back to the superintendent to make the decision essentially again. We want to change that to allow a step lower to make the determination decision and when the appeal comes through, have the superintendent make the final decision.

Vice Chair Steiner: The assistant superintendent might make the first reprimand, and then it would go to the superintendent. The assistant superintendent works for the superintendent, so they are also responsible to their boss. Does that qualify as due process?

Sara Leno: We would like to see the superintendent left out of the decision until the appeal comes through, and he would have to make that appeal decision.

Vice Chair Steiner: If the grievance is serious, the superintendent is ultimately responsible. Can he still with this law change step in and say I am making the final decision today? We are not going to go through all these steps, because it is very serious, and I am responsible and you are done?

Sara Leno: I believe he would have the option.

Rep. Louser: Can you give us an example of something that has gone to administrative hearing and how long it has taken for a discipline decision?

Sara Leno: I do not have an example for you.

Rep. Schneider: You said HR worked on this. Was there a group of employees or a representative of an employees' group who also worked on developing this system?

Sara Leno: We ran it by Becky at HRMS.

Rep. Schneider: What about the highway patrolmen?

Sara Leno: We ran it by HR at the highway patrol, our colonel, our chief of staff, and chief of operations.

Chairman Kasper: Page 1, Line 21. If the superintendent is going to remove the assistant superintendent, then this process that is outlined does not entitle that person to appeal or _ unless that person is dismissed from the patrol. This is dealing with discipline for the assistant.

Sara Leno agreed.

Captain Jody Skogen, Administrative Service Commander for the Highway Patrol, appeared to answer questions. I can give an example that Rep. Louser asked about. Unfortunately, we did have a discipline that led to a termination last fall. The superintendent, based upon our current statue, was directly involved in that decision and signed off on it. The officer is going through an appeals process. At this time, we weren't able to exhaust all the internal avenues for evaluating that appeal. We are already exhausted because the colonel's signature is already on that decision. With this change, there would have been one more internal process in play where the colonel could have reviewed the factors affecting that decision, the chief of operations' decision making, and all the factors that led to the chief of staff making that decision, and then the colonel would have weighed in the appeals process. We have had to take that outside of our agency and have a hearing coming up in May. If we

would have been able to handle and solve it internally, perhaps there would be closure at this point.

Chairman Kasper: This bill is going to give those potential disciplined employees another chance?

Captain Skogen: It is an enhanced due process.

Chairman Kasper closed the hearing.

Rep. Louser made a motion for a DO PASS.

Rep. B. Koppelman seconded the motion.

A roll call vote was taken. 10-1, 3 absent.

Rep. C. Johnson will carry the bill.

Date: 3-8-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2103

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. Louser Seconded By Rep. B. Koppelman

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	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	A				
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	A				
Rep. Steve Vetter	A				

Total (Yes) 10 No 1

Absent 3

Floor Assignment Rep. C. Johnson

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

REPORT OF STANDING COMMITTEE

SB 2103: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO PASS** (10 YEAS, 1 NAYS, 3 ABSENT AND NOT VOTING).
SB 2103 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

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pg 1

Senate Bill 2103
Senate Government and Veterans Affairs Committee
Senator Davison, Chairman
January 4, 2019

Mr. Chairman and Members of the Government and Veterans Affairs Committee, my name is Major Aaron Hummel, chief of staff for the North Dakota Highway Patrol. I am here to provide testimony in support of Senate Bill 2103.

First, this bill would revise North Dakota Century Code 39-03-03 to refer to new patrol officers as "probationary employees" rather than the current language of "temporary appointee." I believe updating the current language to the term "probationary" would bring our agency-specific statute in line with NDAC 4-07-06, which relates to probationary employees in state government. The current language of "temporary appointee" could be construed to mean new highway patrol officers are temporary employees, which is not the case. A temporary employee in state government is not a classified employee, may have only limited benefits, and should only be temporary in nature. Our new troopers are hired into classified positions, counted as an authorized FTE, receive full benefits of permanent employees, and hopefully will become stable, long-term employees of the highway patrol.

This bill would also clarify the probationary period language in 39-03-03 to be consistent with NDAC 4-07-06-03, which designates the probationary period to be a period of six months for state employees hired into a classified position in an agency. Agencies can also extend a new employee's probationary period up to an additional six months if needed to determine satisfactory performance. Traditionally, the highway patrol has utilized the full twelve-month probationary period because new troopers spend approximately six months at the law enforcement training academy before even beginning field training and eventually patrolling on their own. Although century code currently affords us a twelve-month period, the revised language will coincide with administrative code which governs other state employees, help eliminate confusion, and still provide the agency the ability to evaluate employee performance for twelve months.

This last thing this bill would do is revise subsection 3 of section 39-03-13 and 39-03-03 to allow the superintendent of the highway patrol to delegate authority as it applies to discipline. Currently, statute authorizes the superintendent to take reasonable disciplinary action against members of the patrol for inefficiency, misconduct, insubordination, or violation of an established rule whenever the

superintendent deems the action necessary. The bill adds, "or the superintendent's designee." Authorizing only the department head to take disciplinary action would be inefficient in day to day operations. It is important that other supervisory positions within the agency have the authority to administer discipline. Formal disciplinary action includes written letters of warning, suspension without pay, demotion, and termination. Under 39-03-13, disciplinary action of suspension without pay for a period of seven days or less may be summarily ordered by the superintendent and is not appealable to the office of administrative hearings. The highway patrol currently has an internal grievance procedure to allow due process for employees to appeal a disciplinary action to a grievance panel. The panel is provided with the evidence to support the disciplinary action. After reviewing the evidence and hearing from the parties involved, a recommendation either in support of the disciplinary action taken or supporting the proposed resolution by the grievant is provided to the superintendent for a final decision.

For actions of suspension without pay of seven days or less, the decision is final and may not be appealed to the office of administrative hearings. Suspensions greater than seven days, demotion, and termination may be appealed further to the office of administrative hearings. The highway patrol currently has policy in place outlining the level of discipline which may be administered by different levels of the agency. First line supervisors may issue written letters of warning and commanders may suspend without pay for up to seven days. Currently, suspensions more than seven days, demotions, and terminations are administered by the superintendent. The benefit the agency would see by the additional language of "or the superintendent's designee" being added to discipline is that higher level discipline will be administered by the chief of operations for all field positions within the highway patrol and the chief of staff for all administration positions. The final decision would still need to be made by the superintendent in cases of a grievance. This provides a layer of due process that would not be there if the superintendent made initial decisions on discipline. North Dakota administrative code 4-07-20.1-03 states that a grievance must be processed through the agency grievance procedure prior to submitting an appeal to HRMS, which is heard by the office of administrative hearings. Without a layer of supervision below the superintendent being able to make high level disciplinary decisions, the superintendent is essentially hearing the appeal of the decision which was already made by the superintendent.

I appreciate your support in considering the changes offered in this bill and I would be happy to answer any questions you may have.

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A#1

4-07-06-02. Probationary period.

Each newly hired or reinstated employee shall serve a probationary period each time of the employee's hiring into a classified position in an agency. Nonprobationary classified employees are not required to serve a probationary period upon promotion, demotion, or transfer within an agency. Temporary service at the same level and type of work may be considered toward the probationary period.

History: Effective September 1, 1992; amended effective July 1, 1995; November 1, 1996; July 1, 2004; January 1, 2012; July 1, 2014.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1)

4-07-06-03. Purpose and duration.

The purpose of the probationary period is to evaluate whether the employee can meet the performance requirements of the position to which the employee has been assigned. The duration of the initial probationary period must be for six months. However, an agency may use a probationary period with a longer duration if it is needed to determine satisfactory performance, and if it does not exceed one year's duration.

History: Effective September 1, 1992; amended effective July 1, 1995.

General Authority: NDCC 54-44.3-12

Law Implemented: NDCC 54-44.3-01, 54-44.3-12(1)

4-07-20.1-03. A regular employee may file a grievance regarding an employer action.

A regular employee may, in accordance with the respective agency's grievance procedure, file a grievance regarding demotion, dismissal, suspension without pay, forced relocation, reduction-in-force, or reprisal. A grievance must be processed through the agency grievance procedure prior to submitting an appeal to human resource management services, unless a waiver is agreed upon as provided for in section 4-07-20.1-05.

History: Effective November 1, 1996; amended effective July 1, 2004.

General Authority: NDCC 54-44.3-12(1)

Law Implemented: NDCC 54-44.3-12.2

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2103

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Introduced by

Government and Veterans Affairs Committee

(At the request of the Highway Patrol)

1 A BILL for an Act to amend and reenact section 39-03-03 of the North Dakota Century Code,
2 relating to patrolmen being deemed probationary employees for a period of up to twelve
3 months; and to amend and reenact subsection 3 of section 39-03-13 of the North Dakota
4 Century Code, relating to the power of the superintendent to delegate authority for disciplinary
5 action within the highway patrol.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 39-03-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **39-03-03. Patrolmen - Appointment - Removal - Duties.**

10 The superintendent, the assistant superintendent, and the patrolmen constitute the highway
11 patrol. The highway patrol shall enforce the provisions of the laws of this state relating to the
12 protection and use of highways and shall patrol the highways and cooperate with sheriffs and
13 police in enforcing the laws regulating the operation of vehicles and the use of highways. All
14 patrolmen and the assistant superintendent must be appointed by the superintendent. Each
15 patrolman so appointed is deemed a temporary appointee probationary employee for an initial
16 period of twelve six months, during which period the patrolman must be placed under
17 probationary training and service and is subject to an extension of an additional period of six
18 months or dismissal at the will of the superintendent or the superintendent's designee. At the
19 end of the twelve month probationary period, a temporary appointee probationary employee
20 must either be given a permanent appointment by the superintendent taken off probationary
21 status or must be automatically dismissed. The assistant superintendent and patrolmen who
22 have received a permanent appointment are A nonprobationary employee employed in a
23 regular, classified position is subject to removal for cause by the superintendent or the
24 superintendent's designee, but must be permitted to the employee may appeal a dismissal

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1 under chapter 54-44.3; provided ~~that~~ the removal of the assistant superintendent from ~~that~~
2 ~~person's~~ the assistant superintendent position does not entitle that person to appeal the removal
3 unless that person also is ~~also~~ dismissed from the patrol.

4 **SECTION 2. AMENDMENT.** Subsection 3 of section 39-03-13 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 3. The superintendent or the superintendent's designee may take reasonable disciplinary
7 action against members of the patrol for inefficiency, misconduct, insubordination, or
8 violation of an established rule, whenever the superintendent or the superintendent's
9 designee deems the actions necessary, provided that:

- 10 a. When demotion in rank is ~~summarily~~ ordered summarily against a member of the
11 patrol as a disciplinary measure, to be limited to a one-grade reduction in rank,
12 the order is appealable under chapter 54-44.3.
- 13 b. When a reduction in pay of a member of the patrol is ~~summarily~~ ordered
14 summarily as a disciplinary measure, it must be limited to one year's duration and
15 the order is appealable under chapter 54-44.3.
- 16 c. Suspension of pay for a member of the patrol for a period not exceeding seven
17 days may be ~~summarily~~ ordered summarily as a disciplinary measure, but an
18 order for suspension of pay for a longer period is appealable under chapter
19 54-44.3.

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Senate Bill 2103
House Government and Veterans Affairs Committee
Representative Kasper, Chairman
March 8, 2019

Mr. Chairman and Members of the Government and Veterans Affairs Committee, my name is Sara Leno, human resource manager for the North Dakota Highway Patrol. I am here to provide testimony in support of Senate Bill 2103.

First, the bill would revise North Dakota Century Code 39-03-03 to refer to new patrol officers as "probationary employees" rather than the current language of "temporary appointee." I believe updating the current language to the term "probationary" would bring our agency-specific statute in line with NDAC 4-07-06, which relates to probationary employees in state government. The current language of "temporary appointee" could be construed to mean new highway patrol officers are temporary employees, which is not the case. A temporary employee in state government is not a classified employee, may have only limited benefits, and should only be temporary in nature. Our new troopers are hired into classified positions, counted as an authorized FTE, receive full benefits of permanent employees, and hopefully will become stable, long-term employees of the highway patrol.

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The proposed law changes were suggested by HR legal counsel from the Attorney General's Office and have been reviewed by HRMS.

I appreciate your support in considering the changes offered in this bill and I would be happy to answer any questions you may have.

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