

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2239

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Deanna Waller
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10/21/03
Date

2003 SENATE JUDICIARY

SB 2239

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10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2239

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/07/03

Tape Number	Side A	Side B	Meter #
2		X	1.3- End
4	X		8.2 -14
Committee Clerk Signature			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony Support of SB

Sen Joel Heitkamp, Dist 26, introduced the bill (meter 4) as a sponsor. This bill is the discrepancy of one public employee entity Vs any other public employee may be disciplined.

Sen. Heitkamp spoke of the situation.

Mike Geiermann - Attorney for the North Dakota Troopers Assoc. Attachment #1, read testimony (meter 6.4)

Discussion of the history of suspensions within the department and the results. Discussed how the state needs to look at Highway Patrol like any other state employee. Discipline action is as follows: Seven (7) - days or less may appeal to the inside workings of Highway Patrol can not take the issue into the central personal system. Classified employees are covered by the central

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Page 2
Senate Judiciary Committee
Bill/Resolution Number SB2163
Hearing Date 02/03/03

personnel system. Each agency has set forth their own administrative procedure to deal with suspensions and matters of discipline. The Highway Patrol has done the same thing. In regards to State Troopers. They are the only state employees that I am aware of that are when receiving a seven (7) days or less suspension stuck in the eternal workings of the Highway Patrol and can not take that suspension further into central personnel division.

It is three (3) days for any other agency and if you are dissatisfied in the end of this ruling you may appeal this to central personnel. Discussion on this issue. This bill has not been in the statute since 1955. Employee rights and do process has taken great strides since this bill was created.

Senator Thomas L. Trenbeath asked how many suspensions under seven (7) days were metered out last year, 2002? I do not know. Sen. Trenbeth responded that he would like to see the amounts and how often the problem we are trying to correct.

Discussion of "in the same manor as"? (meter 8.7)

Discussion on Suspensions processes (meter 9.3)

Mitchel Rumble - State Trooper with ND Highway patrol and President ND Troopers

Association (meter 12.3) Handed out first page of a petition with fifty-nine (59) signatures -

Attachment #3

Read title 54 (meter 13.2) Do you know how difficult it is to bring a bill forward that your superior officer is against-and do this in front of him, the way the system presently works?

More discussion on current process (meter 14.9)

Senator Stanley W. Lyson, Vice Chairman discussed (meter 18.4) Do we not hold a Highway Patrol in a higher standard-with a badge, gun, and uniform, then most other people.

Page 3

Senate Judiciary Committee

Bill/Resolution Number SB2163

Hearing Date 02/03/03

Discussion of process (meter 22.0) Discussed the yearly average of disciplined officers was 2.

Steve Kerchofer - Highway Patrol for, 19 ½ years, (meter 29.3) Discussed his personal situation on a three (3) day suspension.

Senator Dick Dever asked how personnel would have the ability to make the correct decisions?

(meter 33.9)

Ed Jruchella - Minot ND Highway Patrol (meter 36.2) Discussed his personal situation of suspension. Discussion followed

Testimony in opposition of SB

Arnold Schimke- Retired Superintendent (meter 38) Discussed his lack of support to bill.

Discussed the accreditation of the agency.

Colonel James M. Hughes, Superintendent, NDHP (meter 48.5) read attachment #2

Continued tape 4 side 1A) Discussed how the process is not unlike the military and other issues pertaining to process.

Testimony Neutral to SB

none

Senator John T. Traynor, Chairman closed the hearing

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2239

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/04/03

Tape Number	Side A	Side B	Meter #
5	X		15.1- 18.1
Committee Clerk Signature <i>Maria L. Solby</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with committee work on the bill:

Discussed Bill (meter 15.1)

Motion Made to DO NOT PASS SB 2239 by Senator Stanley W. Lyson, Vice Chairman and seconded by Senator Thomas L. Trenbeath

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment Sen. Trenbeath

Senator John T. Traynor, Chairman closed the hearing

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10/21/03
Date

Date: February 14, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2239

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Senator Stanley W. Lyson, Vice Chairman Seconded By Senator Thomas L. Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson		
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Senator Thomas L. Trenbeath

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

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12/21/03
Date

REPORT OF STANDING COMMITTEE (410)
February 4, 2003 4:24 p.m.

Module No: SR-21-1658
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2239: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2239 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-21-1658

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12/21/03
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2003 TESTIMONY

SB 2239

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10/21/03
Date

Att # 1

2/3

**Testimony Presented on Behalf of the
North Dakota Troopers Association
in Support of Senate Bill 2239**

I am Mike Geiermann, an attorney from Bismarck, and I represent the North Dakota Troopers Association. The North Dakota Troopers Association is an organization which represents 60 current and former members of highway patrol troopers in North Dakota. The organization is approximately 5 years old and undertakes charitable causes and is also concerned about improving the working conditions for North Dakota Highway Patrol troopers. This Association asks for your favorable consideration in recommending a do pass to the North Dakota Senate on Senate Bill 2239.

North Dakota Highway Patrol troopers are classified employees under the Central Personnel System. Under the law as it currently exists, the Superintendent of the Highway Patrol has the authority to discipline troopers in a number of ways and for a number of causes. This authority comes from N.D.C.C. §39-03-13. NDHP has developed a grievance procedure with hearing rights and appeal levels which can be implemented by troopers in the event of a disciplinary action brought against them by the superintendent. The degree of hearing rights and availability of appeals is dependent upon the type of discipline which is administered by the superintendent.

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As it currently exists, the superintendent may suspend a trooper for no more than 30 days without pay. Generally, a trooper who finds himself in that position would have the right to file appeals with the NDHP, and at the exhaustion of that process, file an appeal with Central Personnel Division to receive a hearing before an impartial Administrative Law Judge. However, if the suspension by the superintendent is less than 7 days, pursuant to N.D.C.C. §39-03-13(3)(c), a trooper cannot appeal that decision to the Central Personnel Division and only has the right to an internal appeal within the North Dakota Highway Patrol. While this internal appeal does allow the trooper to present his case to an appeal's board, the appeal's board can only make recommendations to the superintendent who ultimately has the authority to determine the suspension terms. In other words, under the internal appeals process as set forth in this statute, the trooper must appeal his discipline back to the very same person who administered the discipline in the first place, which is the superintendent. Such a system is a basic denial of due process and fairness. The denial of substantive appeal rights for appeals less than 7 days has been in the law since 1955. It's time for a change.

Under Senate Bill 2239, a trooper would have the right to appeal to

Central Personnel any disciplinary action taken against him by the superintendent including a suspension less than 7 days. This Bill will allow troopers to be able to present to an impartial factfinder the merits as well as the facts and circumstances of the disciplinary action taken against them. In addition, Senate Bill 2239 will place troopers on the same level as all other state employees who have the right to appeal any suspension without pay to the Central Personnel Division after they exhaust their administrative remedies. All other state employees who are classified have the right to pursue a Central Personnel Division appeal if they are suspended without pay regardless of duration. In this regard, troopers deserve the same rights as other state employees to an impartial factfinder. The other amendments to §3(a) and (b) are simply housekeeping measures.

The North Dakota Troopers Association asks for your favorable support of 2239 and a do pass recommendation.

A# # 2 2/3

Senate Bill 2239

Submitted by

Colonel James M. Hughes, Superintendent, NDHP

Good afternoon, Mr. Chairman and members of the Senate Judiciary Committee.

At first glance it would appear by looking at section 39-03-13 of the North Dakota Century Code that the Superintendent of the Highway Patrol just arbitrarily suspends officers without pay for up to seven days. That could be no further from the truth of what really happens, nor does it begin to explore each and every case where corrective action or personal accountability for one's actions is required.

The Superintendent is appointed by the Governor and he or she is accountable to the Governor, you as Legislators, and to the people of North Dakota for all the Patrol does or does not do. So when the citizens, the Governor, or you have a compliment to give or a complaint to make, the buck stops here.

We accomplish our mission based on guidance from the Governor, input from the citizens, and funding and guidance from you.

As you know, we wear distinctive, recognizable uniforms, we drive marked cars, we aspire to a **code of conduct** on and off duty, and we are held to policies and procedures defining such ideals as **conduct unbecoming an officer**, use of force, misconduct of an officer, and are expected to live by such words as **honor, ethics, loyalty, trust, and esprit de corps**. For this we are rewarded by you with a great retirement system, patrol vehicles, uniforms, per diem, your confidence, your trust, and your respect.

We, with your help, provide officers with the best training, the best equipment money can buy, and are known nationwide as one of the best outfits in the nation. Each trooper knows going in that the standards are high and the expectations are even higher; and that of our five goals, the fifth is that we hold individuals accountable for their actions -- both good and bad.

Because we work so much as individuals each uniform represents the entire state and the entire Patrol to the public we serve. If you have a desire and measure up, then you have the privilege of wearing this uniform and this badge.

This requires self-discipline and the traditions, policies, rules, and regulations must be followed and adhered to. This is reinforced through monthly training, supervision, and sometimes progressive corrective action. This is needed because the risks are so high, the potential for great damage is ever present, and because the citizens will accept nothing less, nor should they.

We enforce laws and, if you will, we discipline or take corrective action by enforcing those laws onto the citizens of North Dakota. Who corrects us? If law enforcement does not self-discipline themselves, who will?

We've seen what happens when they don't. Costly lawsuits to a state, city or county, abuse of citizens' rights, conduct unbecoming an officer, arrogance, lack of humility, honor, dishonesty – and the list goes on and on.

Our policies and procedures which have been reviewed by the national accreditation committee and approved provide this to be done within the organization for a **measured** amount of corrective action. The process starts at the field command level on the front lines – not in my office. Each and every case requires extensive investigation, records kept, consultation with the Attorney General's Office, and provides for review with remedies provided all along the way and is based on past cases. It is not haphazard or arbitrary, but timely and fair. This process is done internally where grievances can be reviewed by one's peers because an individual's actions reflect on each of them also.

Many of you have served in the military and know the need for this process. It **does not** build public confidence in those we are sworn to serve – you, the people of North Dakota – to put one's indiscretions or lack of good judgment on public display. I know the citizens of North Dakota, my boss, and you expect me and the outfit to remedy complaints, violations of rules and regulations, and maintain order and discipline.

I have been with the Highway Patrol going on 30 years – almost half of its total existence and served as Superintendent going on 11 years. I have been on both sides of the corrective action coin. I've been corrected and I've supported the actions taken by your commanders. Neither side has much enjoyment. But the current system does work.

On Friday after working with a family all night I went to their home and told a young wife and her daughters her husband and their father was dead. I tried to comfort them, followed through helping them then and now to get through their loss – that's tough duty. But in my mind no less difficult than disciplining a trooper – I lose sleep either way.


I ask you now to leave this issue as it is and leave the review of this measured amount of discipline to the department where it belongs.

We are trusted by you to enforce the laws of North Dakota fairly and impartially upon the citizens of North Dakota. We certainly can be trusted to do the same in this case. It is fair, it provides for due process, it provides for internal appeal, it corrects actions before they get worse, it maintains order, and it is cost effective.

Deanna Waller
Operator's Signature

12/21/03
Date

NORTH DAKOTA HIGHWAY PATROL POLICY MANUAL

	SUBJECT	POLICY NUMBER
	EMPLOYEE GRIEVANCE	6-3
	APPLICABLE CALEA STANDARDS	EFFECTIVE DATE
	25.1.1, 25.1.2, 25.1.3, 26.1.6	3-1-99
		RESCINDS
		6-1
		DATED
		12-23-96

PURPOSE

To establish policy and provide procedure concerning employee grievance for department personnel.

POLICY STATEMENT

NDHP regular employees have the right and responsibility to file and process a grievance as provided. If the action or inaction creating the grievance cannot be corrected informally, all employees shall be free to file and process a grievance without fear of unlawful discrimination or reprisal.

DEFINITIONS

Superintendent – Administrative head of the NDHP.

Command Level Officers – Field Operations Commander, Assistant Field Operations Commander, Administrative Services Commander, Support Services Commander, Training Director, or district commander.

Supervisor – An employee's immediate supervisor.

Regular Employee – A person who has completed the probationary period and who is or was in a position classified by the Central Personnel Division at the time the employer action occurred.

Resolution – The issue in question has been resolved and a written report, utilizing the Employee Grievance form, SFN 18409, of the resolution is filed at department Headquarters.

PROCEDURE

- A. The following appeal procedure has been established and may be implemented when an employee has a grievance and believes:
 1. An error has been committed or an action taken that adversely affects employment.
 - a. Exceptions: The reassignment of duties, a transfer, and/or work conditions are not grievable matters.
 2. An employer has taken an action which results in suspension without pay, demotion, termination, reduction-in-force, reprisal, or discrimination in the workplace.
- B. The appeal procedure must be initiated by the employee directly involved.
- C. Upon receipt of a grievance, reasonable effort shall be made by the employee involved and his/her supervisor to reach a clear understanding of the exact nature of the grievance, the issues involved, the remedy requested, and resolution of the matter at the lowest possible step in the process.
- D. If a grievance is not resolved informally by the employee concerned and his/her supervisor at their initial meeting and it is the grievant employee's intent to appeal an action or inaction through the department appeal procedure, the employees concerned will make individual written reports, utilizing SFN 18409, of the facts and circumstances surrounding the grievance as provided by this policy. All such correspondence will be through channels. Each level will acknowledge receipt by signing, dating, and recording the time on such correspondence.

- E. All time frames established within the guidelines must be adhered to unless it is agreed that a longer period of time is required.
- F. An employee must follow each step in numerical sequence. If a resolution is not reached within the step. However, if the action or inaction that precipitated the grievance was initiated by a supervisor, the grievant may proceed directly to step two. If the action or inaction that precipitated the grievance was initiated by a command level officer, the grievant may proceed directly to step three. If the Administrative Services Commander is involved, the employee may proceed directly to the Superintendent.
- G. Department actions against an employee which result in suspension without pay, demotion, or termination shall start with step three within 15 working days of notice of department action.
- H. If an employee has a grievance, he/she may:
1. Step One
 - a. Discuss the specific problem with their immediate supervisor. A problem that results from a specific event or action must be presented within five days. Within five days from the conference, the supervisor will provide the employee, in writing, with his/her decision regarding the matter. If the problem can be resolved, no further formal action is required except that the supervisor's command level officer will be informed of the circumstances of the grievance and the resolution reached.
 2. Step Two
 - a. If the problem cannot be resolved through the conference with the immediate supervisor and/or the employee wishes to document the grievance, the employee may submit a formal grievance. The employee will meet with his/her command level officer within 10 working days of the incident that precipitated the grievance or within five days of receiving the supervisor's response as outlined in step one. An attempt will be made to reach an informal resolution. If all interested parties are satisfied, no further action will be taken except that the command level officer will, within five days, send a detailed written report to Headquarters setting out the facts and circumstances surrounding the grievance and the resolution reached.
 3. Step Three
 - a. If a satisfactory resolution was not reached in step two or if the action or inaction was initiated by a command level officer and the grievant wishes to appeal, he/she will, within 15 working days of the incident that precipitated the grievance or within five days of receiving the command level officer's response as outlined in step two, make a written report utilizing SFN 18409 through channels to the department's Administrative Services Commander. The report must clearly set forth:
 - 1) The specific issues involved
 - 2) The exact nature of the grievance
 - 3) The remedy requested
 - b. The grievant employee's command level officer involved shall immediately make written comments on SFN 18409 and forward it through channels to the Administrative Services Commander. Supervisors will include the following information on the form (additional pages may be attached):
 - 1) Analysis of the facts and allegations.
 - 2) A statement regarding the employee affirming or denying the allegations in the grievance.
 - 3) Identification of the remedy or adjustment, if any, to be made.

Effective: 3-1-99

Page 2 of 4

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10/21/03
Date

- c. The Administrative Services Commander will, after receiving SFN 18409 from the employees concerned, initial and date the report and will then notify the Superintendent that the grievant and his/her command level officer involved were unable to reach a satisfactory resolution to the grievance.
 - d. For appeals of performance appraisals, verbal warnings, or written warnings, the Superintendent will review the grievance and render a binding decision.
 - e. For appeals of an employer action involving suspension without pay, demotion, termination, reduction-in-force, reprisal, or alleged discrimination in the workplace, the Superintendent shall, within ten days of the notification, establish an NDHP appeal hearing board. The board shall consist of three NDHP members. One member shall be selected by the grievant. One member shall be selected by the Superintendent. The chair of the board shall be the department's Administrative Services Commander or a representative designated by the Superintendent. The grievant and the agency may be represented by legal counsel or other representation of their choice at the NDHP appeal hearing board.
 - f. If the employee and the department agree to a waiver of the agency internal grievance procedure, the employee can appeal directly to the Central Personnel Division. The request for waiver must be made within 15 days of the incident that precipitated the grievance.
 - g. The NDHP appeal hearing board shall convene within 30 days after the board selection. The chair of the board shall notify, in writing, the grievant and his/her supervisor, district commander, or command officer involved to appear before the board.
 - h. All testimony presented to the board for their consideration will not be held to the rules of evidence. All oral testimony received by the board will be tape recorded. The recorded proceedings of the board will be transcribed into typewritten format.
 - i. It shall be the responsibility of the board to review all of the facts and circumstances surrounding the grievance and issue a recommended decision. The chair of the board and each member appointed to the board shall have one vote each in all contested issues before the board. The majority vote shall rule. The chair of the board will notify the grievant of the board's decision in writing through channels within ten days. If all interested parties are satisfied, no further action will be taken.
4. Step Four
- a. If the grievance has not been resolved to the satisfaction of the grievant, he/she may, within five days after receiving the board's decision, notify the Superintendent in writing through channels that the grievance has not been resolved.
 - b. The Superintendent, after receiving written notice that the grievance has not been resolved, will render a binding decision in all cases except for those exceptions listed in section 39-03-13 NDCC (demotion in rank, reduction in pay, and suspension without pay exceeding seven days), in accordance with the rules and regulations promulgated by subsection 7 of section 54-42-03 NDCC (suspension without pay, demotion, reduction-in-force, termination, or reprisal), or the department's Workplace Diversity Plan which allow further appeal procedures.
5. Step Five
- a. If the grievance has not been resolved and the grievance falls within the purview of the exceptions listed in step three of the department grievance procedure, the grievant will notify the Superintendent in writing within five days that he/she intends to appeal the Superintendent's decision to the Central Personnel Division as provided by law.

Deanna Wall
Operator's Signature

10/21/03
Date

6. Step Six

- a. The properly completed Appeal to the State Personnel Board form, SFN 3096, shall be filed with the director of the Central Personnel Division. The appeal must be delivered, mailed, or transmitted by facsimile and must be received in the Central Personnel Division Office by 5 p.m. within 15 working days of the service of the results of the agency grievance procedure or within 15 days from the date of the waiver.
- I. An annual analysis of grievances will be conducted by the Administrative Services Commander to determine if a trend exists in filed grievances. If a trend exists, steps can be taken to minimize the causes of such grievances in the future.
- J. Storage of Grievance Material
 1. All personnel involved in the grievance procedure will ensure that all written and verbal information is kept confidential, secured in a locked file, and not readily accessible to personnel who aren't involved in the process.

Effective: 3-1-99

Page 4 of 4

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North Dakota Troopers Association
Resolution on N.D.C.C. 39-03-13 sec 3c

minor

1. A resolution directing the Fifty-eighth Legislative Assembly of North Dakota to support changes in the appeals process as outlined in North Dakota Century Code 39-03-13 sec 3c.
2. Whereas, the members of the North Dakota Troopers Association recognize that fair and equitable treatment of all of its members is essential to the betterment of the organization.
3. Whereas, the suspension of pay up to seven days as outlined in section 3c of 39-03-13 may not be appealed as outlined in chapter 54-44.3.
4. Whereas, the suspension of pay up to seven days as outlined in section 3c of 39-03-13 is not remedial and does not protect the individual from unreasonable and damaging actions.

**NOW, THEREFORE BE IT RESOLVED THAT THE
UNDERSIGNED MEMBERS OF THE NORTH DAKOTA
TROOPERS ASSOCIATION ASK THAT CHANGES BE
IMPLEMENTED THAT WOULD MAKE ALL SUSPENSIONS
WITHOUT PAY CONFORM TO THE APPEALS PROCESS AS
OUTLINED IN N.D.C.C. 54-44.3.**

Name

Date

• <u>Buddy Smith</u>	<u>01-21-03</u>
• <u>Bill Barnes</u>	<u>01-22-03</u>
• <u>Mike Smith Jr</u>	<u>1-22-03</u>
• <u>Carl Smith</u>	<u>1-22-03</u>
• <u>Richard Hummel</u>	<u>1-22-03</u>
• <u>Walter Anderson</u>	<u>Retired 1-21-03</u>
• <u>Mike Mc</u>	<u>1/22/03</u>
• <u>Chad Thomas</u>	<u>1-22-03</u>
• <u>James Busch</u>	<u>1-22-03</u>
• <u>[Signature]</u>	<u>1/23/03</u>
<u>Mark McFadyen</u>	<u>2-2-03</u>
<u>Jody Skowron</u>	<u>2-2-03</u>

non-member

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