

2013 HOUSE JUDICIARY

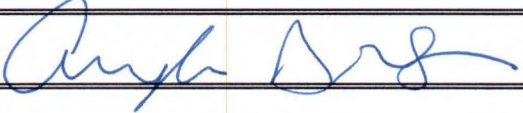
HCR 3008

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3008
February 13, 2013
Job 18883

Conference Committee



Explanation or reason for introduction of bill/resolution:

A concurrent resolution to amend and reenact subsection 1 of section 6 of article VIII and sections 12 and 13 of article IX of the Constitution of North Dakota, relating to the names, locations, and missions of state institutions of higher education.

Minutes:

Testimony 1, 2, 3

Chairman Koppelman called the meeting to order.

Rep Dosch introduced the resolution and testified (Testimony 1).

Rep Maragos: This issue was put on the ballot in the 90s. It was defeated resoundingly. What has changed since 1995 that would make you think we would pass this?

Rep Dosch: It is time to clean it up and make it a more pertinent issue. If you strictly interpret the constitution, a majority of our institutions are operated outside the guise of the constitution.

Rep Delmore: Why have you taken all of the institutions of higher learning out, but left locations for the seat of government and School for the Deaf in? Why didn't you reword these and make it clear what the missions were and leave them in place? Would you be willing to bring in amendments to do that?

Rep Dosch: It defeats the purpose of what we are trying to do. Amending the constitution is no small task. I don't think it would be wise to change the missions in the constitution today because we don't know what tomorrow holds. In five years, we may need to change the missions again. We need to be able to trust the State Board of Higher Ed and the chancellors to have the flexibility.

Rep Delmore: What do we say to people who question the motives of changing only the institutions of higher ed. in this bill?

Rep Dosch: Bismarck State College is not listed in the constitution at all. What does that say about the viability of the institution?

Rep Maragos: There was a referendum on the schools in Bismarck, Devil's Lake and Williston that passed. I don't know if it was constitutional or not. Are you certain those schools are not in the constitution?

Rep Dosch: I am 99% certain. Rep Klemin may be able to clarify that.

Rep Maragos: Was it just an initiated measure?

Chairman: I don't remember the measure, but they are not in the constitution.

Rep Hogan: Did you think about taking the industrial school institutions out if you are taking the higher ed out? Wouldn't the same logic apply?

Rep Dosch: Those remained in because they are very specific in their nature and function.

Rep Hogan: The School for the Deaf has changed significantly.

Rep Maragos: How did the schools in Bismarck, Devil's Lake and Williston come into existence without being in the constitution?

Rep Klemin: This section refers to public trust lands. Bismarck State College is not on public trust lands.

Rep Klemin testified in support of the resolution. We have 11 state institutions of higher education, but only 8 are mentioned in the constitution. This resolution brings our constitution up to date on this subject.

Rep Maragos: What has changed since 1998 when this was resoundingly defeated?

Rep Klemin: We've had quite a bit of change in ND in the last 16 years. There have been changes in technology that allows a person to take classes and graduate from DSU, MSU or UND from the BSC campus. To say in the constitution that it must be done at a specific place and location isn't keeping up with reality.

Rep Delmore: Why when cleaning this up wouldn't you want to have some semblance of what the constitution originally set up? Why are we totally removing them?

Rep Klemin: I looked at the proceedings before the legislature from 1997. This resolution is the same as what came out of the 1997 session. It was put to a vote and defeated in 1998. During the 1997 session, all of those things you talk about were debated and put in as amendments and taken out of the resolution. Rather than go through that again, it was decided to do it the same way as it was in 1997 based on that experience of having it not accepted by the legislature.

Rep Delmore: Does this resolution give authority to the state board of higher education over all of the state institutions of higher education without listing them?

Rep Klemin: The institutions are all listed in the ND Century Code.

Dustin Gawrylow (32:27) testified in support of the resolution (Testimony 2).

Rep Maragos: What is currently in the constitution that is prohibiting flexibility?

Gawrylow: It has become apparent that there is some guidance needed from the legislature to higher ed. to pursue those goals of eliminating duplications and streamlining the system.

Rep Delmore: Do you see this measure as limiting the number and scope of our institutions by one chancellor and one board?

Gawrylow: I think this measure is in a vacuum of those other issues as far as the governance of the system. The legislature needs to create a better framework for guidance for the system to operate, and to reassert that it is the appropriator for higher ed. Those issues of governance are separate from the issue of structure and mission.

Rep Maragos: Do you think we should get rid of the State Board of Higher Education?

Gawrylow: I think we need a change in governance.

Senator David O'Connell (40:27) testified in opposition to the resolution and gave some history of the constitution in regards to institutions of higher ed. To answer an earlier question, the three colleges that were referenced began as community colleges. We drafted a bill to include the three community colleges into the university system.

Chairman: Do you think this is a repeat of what happened in 1998 with this same issue or is anything different this time?

Senator O'Connell: I think it is a repeat.

Chairman: Do the missions of schools because they are constitutional inhibit the flexibility of the board and the university system?

Senator O'Connell: No. The constitution currently gives the Board of Higher Education the complete flexibility to do exactly what you are saying.

Johann Mallem, lobbyist for the North Dakota Student Association (50:54) testified in opposition to the resolution. The eleven institutions of the university system play an important role in the state by bringing higher education and job training to ND students. The Attorney General's letter to Richardson from February 20, 1990 explicitly states that the sections and subsections referenced by this resolution do not prohibit the institutions of higher education from offering more services than constitutionally required. The missions, though they could perhaps stand some updating, do not constitutionally limit the institutions from providing other services.

Hamid Shirvani, Chancellor of the North Dakota University System (54:17) testified neutrally on the resolution and suggested amendments.

Rep Delmore: Do you think this is an effort to get rid of the Board of Higher Education?

Shirvani: I can't tell you the motive behind it.

Rep Delmore: How do you respond to the Attorney General's opinion that there is no limit, this is just one of the parts that each of the institutions need to do?

Shirvani: I agree that there is no limitation.

Rep Karls: Do the eleven colleges currently each have their own board of regents?

Shirvani: They use the terms regents and trustees interchangeably for different purposes. What they are referring to is a foundation or alumni board and they call them regents. Those are not boards that have been vested authority by the legislature.

Chairman: What might ensue if there was a lawsuit that challenged the board on constitutional grounds? Would it make sense to clean up the constitution to make it descriptive of reality today?

Shirvani: If there were some cleaning up of the language that is updated but is not threatening or arising suspicion that would be balance. There are clear statements that a state board of higher education is responsible. Our suggested amendments echo that.

Chairman: Do other states have constitutional provisions similar to this and if not, does higher ed fall apart where they don't exist?

Shirvani: Yes, there are constitutions. Some of the states are much more detailed. Some of the states are way more flexible. I honestly think there are so many more important issues to talk about. This is such a less important issue.

Rep Maragos testified in opposition to the resolution. There is nothing in the constitution that prohibits the State Board of Higher Education from exercising its dually constituted responsibility, flexibility in assigning different responsibilities to all of the institutions. I am not in favor of getting rid of the Board of Higher Education.

Chairman closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HCR 3008
DATE March 13, 2013
JOB 19838

Conference Committee

Carmen Hechler

Explanation or reason for introduction of bill/resolution:

Concurrent resolution relating to the names, locations, and missions of state institutions of higher education.

Minutes:

Chairman Kim Koppelman: Opens for committee work. This is Senator Dosch resolution to remove the names and missions of the colleges and universities from the Constitution.

Committee members engaged in discussion.

Vice Chairman Larry Klemin: the language in here is completely out of date. There are eleven institutions not eight, the missions are different, the state of North Dakota seems to be constantly violating this Constitutional requirement. What this does is provides for more flexibility, we have all of this in statutes and we have added this other institutions by statute. So this cleans it up quite a bit. The intent of this is not to close any institution as we have several millions of dollars invested in these places that we will not do that. I think we have the opportunity now to update this part of the Constitution and we should do it.

Vice Chairman Larry Klemin: Made a motion for do pass.

Rep. Randy Boehning: Second the motion.

7-6-1

Vice Chairman Larry Klemin: Will carry the resolution.

Date: 3-13-12
Roll Call Vote #: _____

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3008

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore		/
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		/
Rep. Randy Boehning	/		Rep. Kathy Hogan		/
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur		/			
Rep. Vicky Steiner		/			
Rep. Nathan Toman		/			

Total (Yes) 7 No 6

Absent 1

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HCR 3008: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HCR 3008 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HCR 3008

2-13-13

HCR 3008

JUDICIARY COMMITTEE

Chairman Kim Koppelman

Mr. Chairman, members of the Judiciary Committee, for the record my name is Mark Dosch representing the 32nd District. I come before you today to ask your support of HCR 3008. This resolution proposes constitutional changes related to names or our institutions, locations, and missions, many which are out dated and very limiting in scope.

First let's talk missions. The constitution talks of teachers colleges at Valley City, Mayville, Minot and Dickinson. NDSU is referred to the "agriculture college". Strictly interpreted, one could argue that all these institutions are operating outside their constitutional mission.

Let's also talk locations. Do we really need to have in our constitution the locations of institutions such as NDSU being in the city of Fargo and county of Cass? Or that UND is located in Grand Forks? Do we really need this in our constitution? I think everyone knows where our colleges and universities are located.

Let's also talk names. Article 8 of the constitution refers to the following:

UND - as the "State University and school of mines"

NDSU - as the "State Agricultural College and Experiment Station" It is not even acknowledged as a university.

Article 9 of the constitution refers to the following:

NDSU- is named differently in this section as "North Dakota State University of Agriculture" It could be argued that it's mission should be constitutionally limited to Agriculture issues.

The State Hospital in Jamestown is referred to as "The Hospital for the Insane"

The Institution for the Developmentally Disabled in Grafton is referred to as "the Insitution for the Feebleminded.

In conclusion Mr. Chairman and members, you can see the need for this bill, and the need to clean up if you will our constitution. This concludes my testimony and will stand for any questions you may have.

In support of HCR 3008 – Testimony by Dustin Gawrylow

While the argument in favor of this resolution as written is mostly based on the principle that elements of government should not be made permanent and should be flexible, the political reality is such that that argument is not likely to go very far.

I would ask the committee to consider using this as a means to discuss long standing issues in higher education in this state.

Quote from Page 496 of Robinson's History of North Dakota:

"In 1933 the legislature cut the appropriations for all institutions of higher education for the biennium to \$1.6 million (they were \$4 million in 1931)... the depression convinced many people in North Dakota it had more colleges than it could support. In 1933 the legislature ordered the Board of Administration to eliminate all unnecessary duplication of courses"; in 1935 it called for "a thorough study of the feasibility of either consolidation or closing of some of these institutions." In 1936 the Tax Survey Commission found fault with the colleges' tendency to expand their programs and pointed out that North Dakota had more state-supported colleges than thirty-three other states. It concluded, however, that duplication was like the weather: everybody talked about it, nobody did anything."

Concepts to amend resolution into something that is considered constructive rather than destructive:

- Modernize the specialties that each campus is to cover, and promote the concept within the university system that by having specialties and eliminating overlap, each campus can prevent anyone from thinking about closing them down.
- Direct the Board of Higher Ed to find ways to maximize efficiencies by pooling major programs – when similar programs are on different campuses, there is a pretty obvious “competition with ourselves” for faculty, students, and grants.
- Integrate the system so that smaller campuses can act as both feeder schools and specialty schools, without those smaller schools being photo copies of each other.
- Continue to promote virtual and remote classrooms of distant campuses in other cities and on the other campuses; but discourage brick and mortar overlap.

Non-structural areas to address:

- Stabilize the ability for students to know the path to their degree, how long it will take to achieve, and the final price tag if they complete in a reasonable amount of time.
- Take the power away from the campuses to use tuition as a bargaining chip in budget discussions.

North Dakota University System

HCR3008 – House Judiciary Committee

February 13, 2013

Hamid A. Shirvani

Mr. Chairman, members of the Committee. My name is Ham Shirvani, Chancellor of the North Dakota University System. I appear today on behalf of the State Board of Higher Education (SBHE) neither in support or opposition to this bill, that is to state that our position is neutral. However, we would request the committee to consider our suggested amendments regarding the SBHE's responsibilities.

Removing the names, locations and missions from the Constitution provides flexibility to the State Board of Higher Education to refine institution mission(s), is warranted. This is not about closing institutions. It is about effectively leveraging system-wide resources to respond to rapidly changing state and educational needs and expectations. Neither the State Board of Higher Education, nor I have a plan to close campuses. This has been tried in other states with little to no success, as it is based on the political will of the state.

As you will recall, the constitution approved by the people of North Dakota upon attaining statehood in 1889 included a provision for the first session of the state legislature to establish a uniform system of public schools, including all public colleges and universities. Until 1919, the Legislature exercised control over state colleges and universities through establishment of various boards, and, eventually, a single board of regents for all higher education institutions was created.

Legislative control of state colleges and universities continued until Gov. Lynn Frazier persuaded the 1919 legislature to assign responsibility to a board of administration under his control. In 1937, Gov. "Wild Bill" Langer attempted to gain control of the North Dakota Agricultural College (now North Dakota State University) and about \$20 million per year in benefit payments to farmers, which resulted in the firing and resignations of several faculty and staff members, including the college president. These actions led to public protest and a 1938 initiated measure that placed control of the state's higher education institutions under a constitutionally independent State Board of Higher Education and gave the SBHE authority over all public colleges and universities.

We believe it is critically important that the original language which created the SBHE and endowed it with the authority to control and administer our state colleges and universities be retained; thus, I offer the attached amendment to restore, in part, the language removed on page 1, lines 15-17 of the bill.

Thank you for your consideration of this change, and I would be happy to answer any questions.

Proposed Amendments to HCR3008
North Dakota University System, 2/13/2013

Page 1, line 15, remove overstrike from “A board of higher education, to be officially known as the state board of higher”

Page 1, line 16 remove overstrike from “education, is hereby created for the control and administration of the” and “state”

Page 1, line 17, remove overstrike from “institutions” and after “:”, insert “of higher education.”

Page 2, remove lines 1 and 2

Renumber accordingly