

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1441

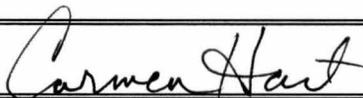
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1441
2/5/2015
23359

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to certification of delegates to a constitutional convention to amend the United States Constitution; and to provide a penalty

Minutes:

Attachment 1-2

Chairman Kasper opened the hearing on HB 1441.

Rep. Kim Koppelman, District 13, appeared in support of this bill. Attachment 1. (:52-06:12)

Chairman Kasper You mentioned a couple times the constitutional convention. Do you mean a convention of the states?

Rep. K. Koppelman I am terribly sorry. I am trying to correct that. You are right.

Chairman Kasper The bill we heard this morning said it would deal with three areas. Does your bill contradict or countermand if that would be the first legislation where 34 states passed it? How does your bill interface with the bill this morning?

Rep. K. Koppelman It is not designed to undermine any of the efforts that are currently out there for specific amendments nor for more general convention. The bill simply says that whatever the call of the convention is then the delegate would be bound by that particular call.

Chairman Kasper This allows the flexibility?

Rep. K. Koppelman I believe it does.

Rep. Amerman Is the penalty the same in other states?

Rep. K. Koppelman I know that the other states have very similar legislation. I can't say whether the penalties are exactly the same.

Roman Buhler, Director of the Madison Coalition, testified over speakerphone. His testimony was handed out. Attachment 2. (13:41-19:29)

Rep. Wallman When North Dakota selects delegates to the convention, how are we sure that the delegate will represent what North Dakota wants?

Roman Buhler That is the essence of the bill. There are essentially two safeguards here that insure that the delegate will do as they are instructed. The first is that a delegate, in order to become a delegate, must take an oath not only to obey instructions but agreeing in advance that that delegate can be replaced if the delegate fails to follow instructions. The second safeguard is that if a delegate does not follow instructions, they can be immediately replaced.

Chairman Kasper This is not to say that a legally elected delegate to the convention of states by the correct authorities here in North Dakota cannot vote his or her conscience once they are at the convention because if they are considering authorized business before the convention, they then will choose to vote yes or no based upon their best intellect and knowledge. There is no way for anyone but a delegate to know what is going on at this convention unless you are there and experience the debate and the discussion. Is that correct?

Roman Buhler You are correct. The goal here is to insure the delegates do not act outside the scope of the Article V resolution passed by the states, but within the scope of that Article V resolution, delegates are there to represent the state unless there are some other instructions from the state legislature, they would be free to vote as they choose.

Chairman Kasper Once the convention adjourns, the delegate or delegates representing our state and all the other states their duties are done, and now the legislature of each of the states will now vote on whether or not they wish to ratify one or any more of the amendments that were proposed from that convention of states. That is our second check and balance?

Roman Buhler The delegate's job is done and ratification must be done in the states. Article V gives Congress the power to determine whether ratification is carried out by state legislatures.

Rep. Wallman Who has the authority to appoint the delegate or delegates to the convention of the states, and who has the authority to replace the delegate or delegates?

Roman Buhler That is a matter that can be determined by state law regardless of how a delegate is chosen. The legislature could select the delegates. The legislature could provide the delegates would be elected. The legislature could provide that the Governor had a role in appointing delegates. The delegate can be replaced by an alternate, and I believe it is the legislative assembly that makes the determination when such a delegate is replaced.

Chairman Kasper Looking at the bill, it shows "the legislative assembly or an official designated by the legislative assembly shall certify each delegate." On Page 2, Line 23,

"the legislative assembly or an official designated by the legislative assembly shall provide the guidance upon the request of any delegate or alternate delegate as to whether a proposed amendment is within the permitted subject matter." It appears in this bill the legislative assembly is the first line of authority, and the legislative assembly could delegate that authority to someone else.

Vice Chair Rohr Do the five states that have enacted this particular piece of legislation have a comparable penalty as to our Class C felony?

Roman Buhler Most of them make this a very serious offense, because violating a state law that threatens the integrity of the constitution is, in fact, a serious offense.

Roman Buhler What you are doing here would be applauded by James Madison.

Pete Hanebutt, North Dakota Farm Bureau, appeared in support. I testified this morning, and this follows the same line of thinking where it fits into our policy and why we favor this. This stops the runaway convention and allows us to have a genuine debate about the things that might need to be discussed without that bogging the discussion down.

No opposition or neutral.

The hearing was closed.

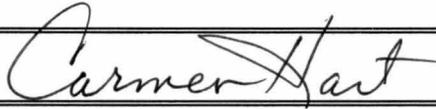
2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

HB 1441
2/6/2015
23439

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to certification of delegates to a constitutional convention to amend the United States Constitution; and to provide a penalty

Minutes:

"Click to enter attachment information."

Chairman Kasper opened the discussion on HB 1441. Rep. K. Koppelman introduced 1441 as a safeguard for the delegates that would represent the state of North Dakota if an Article V convention is ever called. I notice an amendment we need to add. On Line 2 it should be a convention of the states instead of a constitutional convention.

Rep. B. Koppelman moved to adopt the amendment. Line 7 needs this change also.

Rep. Steiner seconded the motion.

Voice vote. Motion carries.

Chairman Kasper The delegates, if there is a convention called, would be representing the state of North Dakota. They would represent what the legislative assembly wants them to represent the assembly as and not allow them to go off. This should help sway some people as far as a cause for concern for a runaway convention.

Rep. Laning made a motion for a DO PASS AS AMENDED.

Vice Chair Rohr seconded the motion.

Rep. M. Johnson Am I right in understanding that it would be fairer to Congress in the application for a state convention if it were laid out to them exactly what will occur at that convention so in calling a state convention they will know what will happen?

Chairman Kasper Good observation. Keep in mind under the constitution if 34 states call for an Article V convention, the Congress is responsible to call the convention. It may avoid a battle with the Congress over the constitution if it were clear and specific and that the delegates are bound.

Rep. Schneider In the interest of expedience, I would like to incorporate by reference my comments generally to the bills yesterday. My specific concern with this bill is that a Class C felony is a really serious offense for something that might be a minor disagreement over freedom of speech for instance.

Chairman Kasper I agree that it is serious. I would propose that the penalties for not following the dictates of the legislative assembly because of the seriousness of considering amendments to the United States constitution is an even more serious undertaking.

A roll call vote was taken. 10 Yeas, 3 Nays, 1 Absent.

Rep. M. Johnson will carry the bill.

15.0907.02002
Title.03000

Adopted by the Government and Veterans
Affairs Committee
February 6, 2015

SA
2/6/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1441

Page 1, line 2, remove "constitutional"

Page 1, line 2, after "convention" insert "of the states"

Page 1, line 7, remove "constitutional "

Page 1, line 7, after "convention" insert "of the states"

Renumber accordingly

Date: 2-6-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1441**

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 B Koppelman Seconded By Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chair Karen Rohr			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Mary Schneider		
Rep. Mary C. Johnson			Rep. Kris Wallman		
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Jay Seibel					
Rep. Vicky Steiner					

*Voice
 Vote
 motion
 carries*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
*To substitute "Convention of the states"
 for the word "Constitution" on line 21
 line 7*

Date: 2-6-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1441**

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 Laning Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		X
Vice Chair Karen Rohr	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Mary Schneider		X
Rep. Mary C. Johnson	X		Rep. Kris Wallman		
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 10 No 3

Absent _____

Floor Assignment M. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1441: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1441 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "constitutional"

Page 1, line 2, after "convention" insert "of the states"

Page 1, line 7, remove "constitutional "

Page 1, line 7, after "convention" insert "of the states"

Renumber accordingly

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1441

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

HB 1441
3/19/2015
Job # 25147

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to certification of delegates to a convention of the states to amend the United States Constitution; and to provide a penalty.

Minutes:

Attachments 1

Chairman Dever: Opened the hearing on HB 1441.

Representative Koppelman, District 13: See Attachment #1 as sponsor and in support of the bill.

(6:25)Chairman Dever: Asked Representative Koppelman to walk through the bill.

Representative Koppelman: Walked through the bill.

(9:56)Chairman Dever: So, subsection 5, paragraph A, refers to the exact text in 5B to the permitted subject matter and I would imagine that depends on how the application was structured?

Representative Koppelman: That is correct. You have already heard and you will hear different ideas about Article V resolutions. Some are specific and some are more of a general topical call. In either case though the delegate, if this bill were law, from North Dakota would be limited to voting on the purpose. I could not run away and stray into all kinds of other areas because that delegate would not be allowed to do it. I would remind the committee that the ratification for amendments to the Constitution is such that if 13 states do this then a runaway convention is not possible because these states would not ratify that kind of document. The delegate would be prevented from voting on that kind of an item. The intent is to remove fear and to put some teeth in the law to make sure that delegates are faithful.

Senator Cook: Will the delegate have the right to vote the way he or she wants to vote or will the legislature tell him how to vote?

Representative Koppelman: This bill is silent on that. It only deals with topic. I suppose the legislature could say that this is a convention for the balanced budget amendment and we want you to vote yes but this bill does not really address that because the oath that they are taking is simply topical. It just says that you are not going to stray from the cause from which you are sent.

Senator Cook: If the legislature did pass a resolution telling them how to vote, would the delegate be bound by that?

Representative Koppelman: Not under this law. It may not be a bad idea to have that kind of thing in law. But this bill does not really seek to deal with that as I read it. It seeks to say that the purpose should be narrow and if you are going you swear to abide by that purpose and you are not going to stray from it.

Senator Cook: If the delegate and the legislature or the appointee of the legislature have a disagreement over whether a topic is germane or not, and the legislature wants him to be removed and the delegate says no, who will ultimately decide?

Representative Koppelman: That is a good question. I suspect that it would ultimately be the legislature since the legislature has the authority to appoint someone, that official, to act in its stead.

Senator Cook: I am talking about the delegate and the official - if they disagree.

Representative Koppelman: The bill is relatively silent about how it all works with the official but since it would imply that the legislature may appoint an official, I think that it is pretty clear that the legislature could also rescind his or her appointment. With respect to a disagreement, I would suspect that the legislature would have the final say.

Senator Cook: You don't think the delegate could have the ability to have the issue resolved in court?

Representative Koppelman: You can sue almost anyone for almost anything in this country so I suppose a delegate could do that however having this statute on the books would give the state a lot more teeth in saying that they have to authority to ultimately decide.

Senator Nelson: We are certifying these delegates but do you have some bill out there that says how we are going to choose them and where they are going to come from? Why are we doing the end thing first?

Representative Koppelman: No I do not. The reason that we are doing this first is because it is very important to set this up ahead of time. I know that there are people out there in state government talking about the Article V convention and what we should do if one is ever called. The states are coming together on what the rules should be and how it would work. Those specifics, if an Article V convention were called, I suspect that the legislative management would be discussing those very things and put a lot of the meat on those bones.

Senator Nelson: On page 2 you talk about a proposed amendment that varies from the exact text. That would mean if you changed an "a" to "the" or any minute little thing and the last lines says that if you violate this section you are guilty of a Class C felony. Isn't that kind of a big penalty for doing something like that?

Representative Koppelman: The exact text language deals with a convention that would be called with exact text. If a number of states call for an Article V convention for the purpose of an amendment with specific wording, and then someone says that something should be changed, our delegate would have to stay with that purpose. Again, the convention was called for that purpose. In the case of a convention that is called for a more generic theme that is a little bit more gray area. This would be first because there are so many out there with fears on runaway conventions and whether you think that fear is real or bogus why not protect and insulate against it. It will embolden states.

Senator Cook: We have been listening all morning to this topic and we heard testimony and I thought it was right on about the trouble with America. We have two Constitutions; we have one as written and one as interpreted. Yet one presenter after another came up here and talked about an Article V convention or in this case how we choose our delegates and they are comfortable with their idea because they look at the Constitution as written. How do you know that this is not going to be subjected through a court and a Constitution as somebody wants to interpret it?

Representative Koppelman: I would submit that this kind of movement puts us in less jeopardy to court interpretation. I ask you to take a step back and think about this. Who readily amends the Constitution, if not in fact, in effect? The courts. So if you run the Supreme Court you don't want a convention because it could cramp your style. You are the arbiter and you are the one out there saying what the Constitution means. If a court decision goes awry of that meaning and the states want to rise up and say that they want to amend to clarify what it means; now a lot of them are afraid to do it because of this fear of a runaway convention. This would embolden them to call for amendments that they think are important and I think the courts would be brought back into line by this kind of an effort.

Chairman Dever: Am I correct in my understanding that the application of this bill is not specific to any certain Article V convention but generally to any and that it is indefinite in term so that if it is not changed 30 years from now it would apply.

Representative Koppelman: That is correct.

Chairman Dever: Then this is not subject to any agreement with any other state so we can write it as we like?

Representative Koppelman: That is correct. I believe that there might be specific language that differs a bit in other states but the ideas are the same.

Senator Flakoll: Say that we have 47 delegates - what would your interpretation be on the issue of residency and we have that issue coming up this session quite a bit? Am I right that the bill seems to be silent on that?

Representative Koppelman: You are right. The bill does not speak to that at all. The legislature could certainly pass legislation or in the process of selecting a delegate could regulate all of those parameters.

Senator Flakoll: What would your thoughts be on if we had the purpose of a convention being a balanced budget and a delegate voted on a small change such as a date changing from 2020 to 2025 would they get a Class C felony?

Representative Koppelman: There is a lot of ground between doing something like you just described and looking through prison bars. I do not think we should loosen this because I think if you do that I think you open the door wider for interpretation of meaning and intent. The way it is worded it talks about the exact text. I suspect there might be a phone call back to the state or a meeting and there would be some consultation between the delegate and the state and if the legislature decides that they can do that then it could be done. There is some leeway built into the idea of the legislature overseeing and deciding of when that delegate has strayed or the official that the legislature appoints.

Senator Flakoll: On the class C felony, are there other states that have that in there?

Representative Koppelman: There is a variety of different penalties and I can get that information for you. The reason we chose a Class C felony is because amending the Constitution is pretty serious stuff. I think it rises above the misdemeanor level when you are talking about this kind of weight. A Class C felony is the lowest level of felony we have.

Chairman Dever: A Bible verse popped into my head, 2nd Corinthians 3:5, says "for the letter kills but the spirit gives life".

Representative Koppelman: That is why the bill was drafted the way that it is. We realize that some calls for an Article V resolutions that are very specific and some are topical and I think the bill does care for both possibilities.

Senator Cook: Back to the Class C felony, to be guilty of a Class C felony, a charge is going to have to declare you guilty. To go to a judge would have to first be charged. Who would charge you with the crime?

Representative Koppelman: I would assume the state or county.

Senator Cook: (Talked about a personal experience.)

Representative Koppelman: That demonstrates there is some wisdom in that.

(29:05)Roman Buhler, Director, Madison Coalition: Testified in support of the bill. I was a council to the committee of the US House of Representatives for 14 years. During that time I observed what I felt was an unpardonable disrespect by members of Congress for the authority of states. I was involved in drafting a bill which imposed a \$3 billion unfunded mandate on states. I complained directly to the Speakers office and the answer was that states don't matter and we could do it. Since that time it has been a goal of mine and

people I work with to restore a balance of state and federal power; and to do that while honoring the original intent of the authors of the Constitution. I think it is worth repeating a quote that was delivered by James Madison years ago where he said "it (meaning the Constitution) equally enables the general and state governments to originate the amendment of errors as they may be pointed out by the experience of one side or another". That is James Madison in federalist 43. The goal of HB 1441 is to two fold. It's most important goal is to protect the Constitution. To make sure that if someday we have a convention that it will be strictly limited to the purpose for which it is called. That is critical to the preservation of our Constitution. The second purpose is to strengthen the power of states in relation to the federal government. You may favor a convention in which case limiting a convention might be something that appeals to you. You may oppose a convention in which case you want to make sure that the convention does not do damage to the Constitution. Or, you may, like the states that forced Congress to propose the Bill of Rights, merely want to force Congress to propose amendments that states want. In order to force Congress to propose an amendment that states want Congress has to legitimately fear the power of states. The power of states to threaten a convention that could potentially be limited as narrowly as to an up or down vote on a single amendment is a threat that Congress will not ignore. Three times in American history, when faced with a much lower level of a threat, Congress has proposed the amendments states one; the Bill of Rights, the 17th Amendment, and the 22nd Amendment. There is a historical precedent for states having power in the system and for some reason in the modern era states have forgotten how to use that power. Six states have passed this legislation and it is an important step toward restoring the balance of state and federal power. It is modeled on similar laws that many states have to solve one of the problems of the Electoral College. There is a reoccurring concern that someone will be chosen by a state to go to the Electoral College having pledged to vote for a presidential candidate and then ignore that pledge when they get to the Electoral College. In the same way that states can force presidential electors to keep their promise, this law makes sure that delegates to an Article V convention have to keep their promise. It does that in two simple ways. It gives the state the power to replace delegates who ignore the instructions from the state. (34:00-Refers to Page 2 of the bill) It puts you as legislators in charge of defining the scope of a convention. If you want to make sure that a convention is very strictly limited to the purpose for which it is called, then you should consider supporting this legislation.

(35:50) Pete Hanabutt, North Dakota Farm Bureau: Testified in support of the bill.

(37:01) Don Fotheringham, Freedom First Society: Testified in opposition to the bill. There is no such thing as a sovereign body above the people. There are three levels. The people are at the top and underneath the people are their constitutions that they write and then the state they represent. What you have just heard is ridiculous. Once your delegates are appointed and the gavel goes down and the convention begins, they are not representing the state. They are representing the people. Their voice is the supreme sovereignty of a free republic. You are not going to pull someone out of a convention that has already convened and fire them. Everything in the Constitution prevents all of the complaints that we have had today. It would all be concluded if we got back under the Constitution exactly as it is. Notice also that none of the proponents have said what is flawed in the Constitution that causes this to happen. There is nothing wrong with it - it just

has to be lived. It is a serious matter and if we turn that convention over to other states then you as a state can kiss it goodbye. I think we are in trouble if we tolerate this.

(41:10) Tom Ricker, President, North Dakota AFL-CIO: Testified in opposition to the bill. I am in opposition to the whole premise of the constitutional convention idea. Basically you are going to put your delegate on a two inch leash and if they stray then the legislature will be the ones to decide if they are guilty or not. North Dakota has separation of powers. That would be something the judicial system would have to determine if a law has been violated. I do not think the legislature is judge, jury, and executioner. Specifically, I have a problem with the Class C felony. A lot if it is a matter of interpretation. I do not think that the legislators should be the one determining if they are within the parameters or not. North Dakota is a lowly populated state and we have primarily agriculture and we are somewhat of a welfare state. We get back more money than we pay the federal government in taxes. If you call a constitutional convention and it is about a balanced budget, there are two ways to balance the budget. You can increase revenue or decrease spending. Be careful what you ask for sometimes. I think this bill is too vaguely written and it puts them on too short of a leash. We elect people because we trust that they are going represent us.

(43:19) Chairman Dever: The language that says knowingly and willingly violates this section is guilty of a Class C felony is typical of language that sets a penalty. It does not determine the guilt of the individual. It just says that is what the penalty is for knowingly and willingly violating it.

Tom Ricker: That could be up for interpretation whether you felt you were in violation or not. It does not say that you will go in front of a judge.

Senator Cook: I do not think we are a welfare state anymore. Recent economic growth I believe has gotten us so that we are not. Is AFLCIO opposed to these bills?

Tom Ricker: I am opposed personally.

Chairman Dever: On the issue of federal money coming to the state, you have two air bases and a low population on a per capita basis, that is a lot of federal dollars coming to the state and when we have miles of highway on a higher level per capita that is another thing. I personally don't buy the argument. I am sorry.

Tom Ricker: We do have low per capita in the state. There are a lot of federal dollars that come into the state to help support agriculture.

Chairman Dever: That is a cheap food policy to help hold down food prices in the grocery store.

Chairman Dever: Closed the hearing on HB 1441.

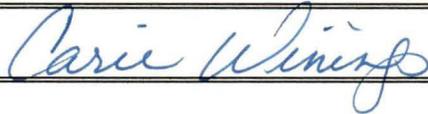
2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1441
3/20/2015
Job # 25163

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

No Attachments

Chairman Dever: Opened HB 1441 for committee discussion. I think there was some real heartburn over Page 2, Line 31.

Senator Flakoll: Do you want to vote on the amendments separately or would you like to combine them?

Chairman Dever: I am ok with combining them.

Senator Flakoll: Moved Amendment 15.0907.03001 with removing the Class C Felony on page 2, Line 31.

Senator Davison: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Davison: For clarification on my behalf, would my understanding be correct if HB 1441 could be the delegate bill for any of these conventions that we heard about yesterday?

Chairman Dever: I asked the question yesterday if it was specific or was it general and is it of indefinite term. The answer I got was that it was.

Senator Flakoll: Recognizing that we did pass HCR 3015, and if that were to move forward, we would need a process for delegates.

Senator Flakoll: Moved a Do Pass As Amended.

Senator Davison: Seconded.

Chairman Dever: I kind of like it.

Senator Flakoll: My philosophy still is that it may be your grandchildren or after that use this and I do not see this happening any time soon.

Chairman Dever: As circumstances change it is in the Century Code and it is not in the Constitution. They can adjust it.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Motion Carried.

Senator Flakoll will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1441

Page 1, line 2, after "states" insert ", called pursuant to article V,"

Page 1, line 8, replace "an interstate" with "a"

Page 1, line 8, after "convention" insert "of the states"

Page 1, line 10, replace the first "the" with "this"

Page 2, line 13, replace "on" with "upon"

Page 2, line 18, replace "on" with "upon"

Re-number accordingly

March 20, 2015

3/20/15
JNE

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1441

Page 1, line 2, after "states" insert ", called pursuant to article V of the United States Constitution,"

Page 1, line 3, remove "; and to provide a penalty"

Page 1, line 7, remove "**- Penalty**"

Page 1, line 8, replace "an interstate" with "a"

Page 1, line 8, after "convention" insert "of the states"

Page 1, line 10, replace the first "the" with "this"

Page 1, line 22, remove the second underscored comma

Page 2, line 6, remove the second "the"

Page 2, line 10, after "assembly" insert an underscored comma

Page 2, line 11, after "text" insert an underscored comma

Page 2, line 11, remove the underscored comma

Page 2, line 13, replace "on" with "upon"

Page 2, line 14, after "convention" insert an underscored comma

Page 2, line 17, after "assembly" insert an underscored comma

Page 2, line 17, remove the underscored comma

Page 2, line 18, replace "on" with "upon"

Page 2, line 21, after "assembly" insert an underscored comma

Page 2, remove line 31

Re-number accordingly

Date: 3/20
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1441

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 Flakoll Seconded By Davison

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais		✓
Vice Chairman Poolman	✓		Senator Nelson		✓
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Flakoll

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

REPORT OF STANDING COMMITTEE

HB 1441, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1441 was placed on the Sixth order on the calendar.

Page 1, line 2, after "states" insert ", called pursuant to article V of the United States Constitution,"

Page 1, line 3, remove "; and to provide a penalty"

Page 1, line 7, remove "- Penalty"

Page 1, line 8, replace "an interstate" with "a"

Page 1, line 8, after "convention" insert "of the states"

Page 1, line 10, replace the first "the" with "this"

Page 1, line 22, remove the second underscored comma

Page 2, line 6, remove the second "the"

Page 2, line 10, after "assembly" insert an underscored comma

Page 2, line 11, after "text" insert an underscored comma

Page 2, line 11, remove the underscored comma

Page 2, line 13, replace "on" with "upon"

Page 2, line 14, after "convention" insert an underscored comma

Page 2, line 17, after "assembly" insert an underscored comma

Page 2, line 17, remove the underscored comma

Page 2, line 18, replace "on" with "upon"

Page 2, line 21, after "assembly" insert an underscored comma

Page 2, remove line 31

Renumber accordingly

2015 TESTIMONY

HB 1441

#1 2-5-15
1441

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
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House GVA Committee
Testimony on HB 1441
2-5-15

Mr. Chairman and members of the Committee, House Bill 1441 will help re-empower states and ensure that they have the authority that James Madison, the father of the United States Constitution, believed that that founding document already gave them--to safely propose amendments to the Constitution.

When our Founding Fathers crafted the US Constitution, they explicitly created a federal government with powers that were limited and enumerated. That government was created by states, which retained powers that were unspecified and unlimited, as the Tenth Amendment verifies, stating that powers not specifically granted to the federal government are reserved to the states and the people.

The primary tool--the "trump card"--which the Founders preserved for the states, in the Constitution, is Article V. It ensured the states the authority to propose amendments to the US Constitution by calling for a Convention.

In this generation, however, states have been paralyzed and haven't used this authority, because of the fear of a "runaway convention". There is much discussion on this topic today, but whether you believe that such a fear is bogus or very real, why not build a firewall against such a possibility, to ensure that it can never happen? That's exactly what House Bill 1441 seeks to do.

HB 1441 would insulate North Dakota from taking part in a convention which strays from the purpose for which it was called and, if a sufficient number of states enact similar measures, should a runaway convention ever occur, they would prevent its product from ever becoming part of our United States Constitution.

Our Founding Fathers intended that the states should have great influence in our Federal Republic. That's why George Mason insisted, at the Constitutional Convention, that the Constitution they crafted must be amendable, because it would doubtless prove flawed, and that there must be a way to amend it without involving Congress, since abuse of federal power might be the very problem in need of remedy.

Today, those words are almost prophetic, yet we have been paralyzed by fear and the right of the states, which the Founding Fathers built into the Constitution, has become virtually meaningless precisely because of that fear.

The result is not that the Constitution is never amended, in fact or effect, but simply that it is never amended in the fashion that our Founders intended, and the role of the states, in our federal system, is continually diminished, as a result.

I can't emphasize the point enough that this bill does not mean that a Constitutional Convention would ever be called and does nothing to make one more likely. In fact, one could argue that it may even make a convention less likely.

With these measures in place, if Congress failed to act to prevent a convention in these circumstances, it would not become a runaway convention, because the states would have prevented the possibility. Nothing currently in North Dakota law prevents our state from being part of a runaway convention. House Bill 1441 offers that important protection!

The Bill prevents any North Dakota delegate to a Constitutional Convention from straying from the narrow purpose for which a Convention might be called and penalizes and replaces that delegate, should he or she violate the oath required.

North Dakota could have been the first state to pass this law. We had it before us four years ago, but it was a very new idea. The Committee it was before decided, instead, to convert the bill into a study, but the study never occurred.

Since then, five other states--Indiana, Tennessee, Florida, Georgia, and Utah--have already passed such laws. It's time that we join them in this effort to re-empower states and protect our Republic and our Constitution.

I respectfully urge a "Do Pass" recommendation on House Bill 1441.

#2
1441
2-5-15

Testimony in support of HB 1441

My name is Roman Buhler and I am submitting this testimony in support of HB 1441, the North Dakota Faithful Delegate Bill.

I was, for 14 years, the election law counsel to the Committee on House Administration of the U.S. House of Representatives.

I am currently the Director of the Madison Coalition, working to restore a balance of state and federal power.

One of the keys to restoring that balance of power is protecting the power of states to safely use Article V of the U.S. Constitution to propose, or force Congress to propose, amendments to the U.S. Constitution.

The key to the power of the states under Article V is their ability to ensure that delegates to a Convention that states may call, for one or more specific purposes or Amendments, could not expand the Convention's scope to include other purposes or Amendments.

Historical precedent strongly suggests that the states have the Constitutional power to strictly limit the scope of a Convention.

James Madison suggested as much when he said in Federalist 43 that the states have the same power as Congress to propose "the Amendment of errors".

If Congress can propose a specific Amendment and, as Madison believed, states have the same power as Congress to propose an Amendment, that could only be true if states have the power to strictly limit a Convention.

But because we cannot predict with absolute certainty how a future Supreme Court majority might rule, states can and should act on their own to protect the Constitution from any potential risk that a Convention might try to ignore limits imposed on it by the states.

The Faithful Delegate Law relies on the fact that no matter how delegates are selected, they represent the states which sent them.

If a state passes a Faithful Delegate law to ensure that it has the power to ensure delegates' faithfulness or replace disobedient delegates, then that state has the power to ensure that its delegates accept and honor the limits their state imposes upon them.

Delegates can be required, as a condition of being selected as a delegate, to agree under oath to honor the limits on their authority, and to agree that they are subject to replacement and punishment for failing to honor those limits.

Faithful delegate laws have been already enacted in 5 states, Indiana, Florida, Tennessee, Utah, and Georgia.

If a majority of states with a majority of the population enact such laws, then a majority of Convention delegates at any Convention would be under control of those states, whether each state is represented equally, by electoral vote strength, or by population at the Convention.

The coalition of states which, through their "Faithful Delegate" laws control a majority of delegates, can ensure that the Convention does not exceed the authority granted to it by the Article V Resolutions of the 34 states who called the Convention.

Having these laws in place vastly increases the Article V power of states.

States could safely use their Article V power to begin the process of reining in the abuse of federal power and returning appropriate power to the states and the people where it belongs.

2/3 of the states could call for a Convention that everyone understands would be strictly limited to one or more specific subjects that each of the 34 states specifies in its Article V Resolution, or even to an up or down vote on a specific Amendment that 34 states want.

If both states and Congress understand that the states have the power to use the Article V process to propose amendments states want, then Congress is far more likely to take state concerns seriously.

Even opponents of holding an Article V Convention cannot be sure that at some future date 34 states, frustrated with a dysfunctional political process in Washington, might call an Article V Convention.

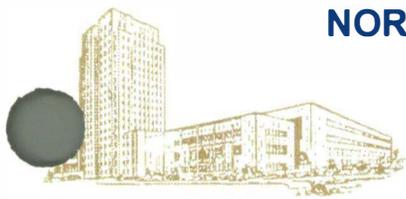
If such a Convention were to take place, "Faithful Delegate" laws would help to ensure that such a Convention could not act outside the authority granted to it by the states who called for it to take place, and that our Constitution is protected from unanticipated amendments.

The bottom line is that to protect our United States Constitution, take power back from Washington, and improve the bargaining power of states with the federal government, North Dakota should enact the "Faithful Delegate Law", HB 1441.

Thank you for allowing me to submit this testimony.

Roman Buhler
Director,
The Madison Coalition
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COMMITTEES:
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Senate GVA Committee

Testimony on HB 1441

3/19/2015

Mr. Chairman and members of the Committee, House Bill 1441 will help re-empower states and ensure that they have the authority that James Madison, the father of the United States Constitution, believed that founding document already gave them--to safely propose amendments to the Constitution.

When our Founding Fathers crafted the US Constitution, they explicitly created a federal government with powers that were limited and enumerated. That government was created by states, which retained powers that were unspecified and unlimited, as Madison noted and as the Tenth Amendment verifies, when it states that powers not specifically granted to the federal government are reserved to the states and the people.

The primary tool--the "trump card"--which the Founders reserved for the states, in the Constitution, is Article V. It ensured the states the authority to propose amendments to the US Constitution by calling for a Convention.

In this generation, however, states have been paralyzed and haven't used this authority, because of the fear of a "runaway convention". There is much discussion on this topic today, but whether you believe that such a fear is bogus or very real, why not build a firewall against such a possibility, to ensure that it cannot happen? That's exactly what House Bill 1441 seeks to do.

HB 1441 would insulate North Dakota from taking part in a convention which strays from the purpose for which it was called and, if a sufficient number of states enact similar measures, should a runaway convention ever occur, they would prevent its product from ever becoming part of our United States Constitution.

Our Founding Fathers intended that the states should have great influence in our Federal Republic. That's why George Mason insisted, at the Constitutional Convention,

that the Constitution they crafted must be amendable, because it would doubtless prove flawed, and that there must be a way to amend it without involving Congress, since abuse of federal power might be the very problem in need of remedy.

Today, those words of warning are nearly prophetic, yet we have been paralyzed by fear and the right of the states, which the Founding Fathers built into the Constitution, has become virtually meaningless precisely because of that fear.

The result is not that the Constitution is never amended, in fact or effect, but simply that it is never amended in the fashion that our Founders intended, and the role of the states, in our federal system, is continually diminished, as a result.

I can't emphasize the point enough that this bill does not mean that an Article V Convention would ever be called and does nothing to make one more likely. In fact, one could argue that it may even make a convention less likely.

Nothing currently in North Dakota law prevents our state from being part of a runaway convention. House Bill 1441 offers that important protection!

The Bill prevents any North Dakota delegate to a Convention of the states from straying from the purpose for which a Convention might be called and penalizes and replaces that delegate, should he or she violate the oath required.

North Dakota could have been the first state to pass this law. We had it before us two years ago, but it was a very new idea. The Committee it was before decided, instead, to convert the bill into a study, but the study never occurred.

Since then, Indiana became the first state to pass the Faithful Delegate Law and four other states-- Tennessee, Florida, Georgia, and Utah--have already passed such laws. It is also currently pending in other states. It's time that we join them in this effort to re-empower states and protect our Republic and our Constitution.

I respectfully urge a "Do Pass" recommendation on House Bill 1441.

15.0907.03001
Title.

Prepared by the Legislative Council staff for
Representative K. Koppelman
March 19, 2015

#1 pg 3

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1441

Page 1, line 2, after "states" insert ", called pursuant to article V,"

Page 1, line 8, replace "an interstate" with "a"

Page 1, line 8, after "convention" insert "of the states"

Page 1, line 10, replace the first "the" with "this"

Page 2, line 13, replace "on" with "upon"

Page 2, line 18, replace "on" with "upon"

Renumber accordingly