

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3009

2001 HOUSE JUDICIARY

HCR 3009

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3009

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-23-01

Tape Number	Side A	Side B	Meter #
Tape I	x		3581 to 4460
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chr DeKrey opened the hearing on HCR 3009. All present with the exception of Rep Onstad. The clerk will read the title, A concurrent resolution for the amendment of section 9 of article 1 of the Constitution of North Dakota, relating to judicial review of governmental determinations that impact a person's property or activities.

Chr DeKrey: Since there was no one to appear to introduce the bill we will take testimony.

Allen Hobert: Director of the Office of Administrative Hearings (see attached testimony).

Chr DeKrey: Are there any questions for Mr Hobert? Seeing none, thank you appearing in front of this committee.

Dave Thiele: Senior Litigation Counsel for the North Dakota workers Compensation, I just want to voice our board of directors opposition to this bill.

Rep Mahoney: Is your concern, loosing control, getting into court tha' fast, you don't want to get into court that fast?

Page 2  
House Judiciary Committee  
Bill/Resolution Number HCR 3009  
Hearing Date 01-23-01

Dave Thiele: No it isn't a control issue, it is the process and I think it is obvious what it would do to the current court system. Right now our cases are greatly reduced. This bill would see an increased cost in the administrative cost. The current process serves the individual best.

Rep Mahoney: Do you know, is there someone here from the Supreme Court that opposes this bill.

Dave Thiel: Most of the people that we talked to were just made aware of this bill yesterday.

Chr DeKrey: Anyone else wishing to testify on HCR 3009? We will recess the hearing on HCR 3009 until I can talk to the people who presented this bill.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR3009a

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-31-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		01 to 1816
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey resumed the hearing on HCR 3009.

Bob Hale: President of Spectrum Care LLC (see attached testimony)

Rep Klemin: I see political subdivisions are not included in the bill, can you tell me why?

Bob Hale: They are included.

Rep Klemin: Would this be an increase work load for the courts and possibly increase the number of judges..

Bob Hale: We have two judicial systems, we have the judicial branch and we have the executive administrative remedies branch. We have more attorneys and hearing examiners working in that branch then we do in our entire judicial branch. Under the new system we would see a difference in the outcome, there would be fewer grievances. Citizens would still have access to both systems.

Rep Klemin: You see no increase in the work load of the district court.

Bob Hale: Decrease in the administrative hearing examiners.

Chairman DeKrey: I see the work load of the district court going up and the administrative hearing going down? I believe we would have to have some kind of fiscal note.

Bob Hale: I believe it would have a very small, when people become aware. The option would be that the average citizen would have their day in court.

Vice Chr Kretschmar takes over the hearing.

Rep Maragos: Am I to understand, the fact that we have this procedure, contributes to the fact that North Dakota is not growing.

BOB Hale: No, I am not. Our state is alone in the entire nation in the direction that it is headed. This bill would make North Dakota a very friendly citizen state.

Rep Maragos: Did you say that 2% of the state budget is allocated to the judiciary.

Bob Hale: Two per cent is the budgeted amount that funds the judicial system.

Rep Maragos: Asks a question of the percentage of the over all budget.

Bob Hale: I was responding to Chr DeKrey, it may led to higher costs.

Rep Maragos: Can you tell how much the Legislative Branch costs the Legislative Branch doesn't register on the scale.

Bob Hale: I don't know what the numbers are.

Rep Maragos: I believe that you said, that hearings have appellate status, isn't that the same thing as your day in court.

Bob Hale: No, it is not the same, it is an appellate review, not a review of the facts.

Rep Maragos: Could we accomplish the same thing in the legislation, appeal on the merits, can we do this without changing the constitution.

Bob Hale: You could.

Page 3  
House Judiciary Committee  
Bill/Resolution Number HCR 3009  
Hearing Date 01-31-01

Rep Klemin: On page 2 lines 2 and 3, is this the intent that you would have the right to go to court?

Bob Hale: No, the intent is that there would be a jury. This is the option of the plaintiff not the option of the defendant.

Chairman DeKrey: If there are no other questions, thank you for appearing. We will close the hearing on HCR 3009.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR3009b

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-31-01

Tape Number	Side A	Side B	Meter #
TAPE II		x	2608 to 3598
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey called the committee to order and took up HCR 3009. Does someone want to make a motion.

COMMITTEE ACTION

DO NOT PASS motion made by Rep Grande, seconded by Rep Wrangham. Discussion was held on the bill. The clerk will call the roll on a DO NOT PASS motion. The motion of DO NOT PASS and the second were withdrawn.

We have a DO PASS motion made by Rep Grande, seconded by Rep Delmore. Discussion was held. The clerk will call the roll on a DO PASS motion. The motion passes with 8 YES, 6 NO and 1 ABSENT. Floor carrier Chairman DeKrey.



Date: 01-31-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3009

House JUDICIARY

Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Rep Grande Seconded By Rep Delmore

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar		✓			
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud		✓			
Rep Bruce Eckre	✓				
Rep April Fairfield	✓				
Rep Bette Grande		✓			
Rep G. Jane Gunter		✓			
Rep Joyce Kingsbury		✓			
Rep Lawrence R. Klemin		✓			
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad					
Rep Dwight Wrangham	✓				

Total (Yes) 8 No 6

Absent 1

Floor Assignment Chr DeKrey

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

**REPORT OF STANDING COMMITTEE (410)**  
**February 1, 2001 8:56 a.m.**

**Module No: HR-18-2076**  
**Carrier: DeKroy**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HCR 3009: Judiciary Committee (Rep. DeKroy, Chairman) recommends DO PASS**  
**(8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HCR 3009 was placed on the**  
**Eleventh order on the calendar.**

2001 TESTIMONY

HCR 3009



# OFFICE OF ADMINISTRATIVE HEARINGS

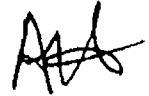
STATE OF NORTH DAKOTA  
1707 North 9th Street  
Bismarck, North Dakota 58501-1882

Allen C. Hoberg  
Director

701-328-3260  
FAX 701-328-3254

## MEMORANDUM

TO: Fifty-seventh Legislative Assembly  
State of North Dakota

FROM: Allen C. Hoberg, Director   
Office of Administrative Hearings

RE: House Concurrent Resolution No. 3009

DATE: January 23, 2001

Since the 1930s there has developed administrative mechanisms in this country on both the federal and state levels to dispose of administrative disputes at an administrative hearings level outside the jurisdiction of the courts, except, of course, the courts have retained jurisdiction over administrative appeals from the hearings of these various administrative mechanisms. These various administrative mechanisms generally take the form of administrative agencies practices acts, and related statutes and rules. It is true that prior to the development of these administrative mechanisms the court systems (state and federal) did dispose of all administrative disputes. However, I do not believe that it is wise to simply allow all those who wish to bypass the current administrative mechanisms in place for administrative disputes to go to the courts for the initial hearing on those disputes. The courts are not prepared to handle the increased

caseload for all of the possible types of cases that could then go to hearing in the courts (although it is not known how many people will initially avail themselves of this option, it could be in the thousands).

Furthermore, this bill would have a considerable impact both fiscally and otherwise on the existing administrative mechanisms of government, whether they be OAH or agencies outside of OAH's jurisdiction. It would also have considerable fiscal impact on the court system.

Any legislative measure with a goal such as this one should have considerable legislative study before it is passed.

fz

# TESTIMONY IN SUPPORT OF HCR 3009

## Abolishing of Mandatory Administrative Remedies HEARD BEFORE THE HOUSE JUDICIARY COMMITTEE

Chairman DeKrey and members of the House Judiciary Committee I appreciate the opportunity to present testimony to your committee on this very important proposal.

This proposal if presented to the voters of North Dakota and passed by them would reverse a trend that began in the 1930's. Beginning in the 1930's we saw rapid growth of executive agencies which spawned tens of thousands of rules and regulations impacting our daily lives. These rules and regulations, when imposed on citizens often resulted in disputes and grievances and challenges to their imposition.

Out of these grievances came what are today known as the "administrative remedies process". In short, the "administrative remedies process" is a process that a citizen must go through after an executive agency makes a final determination impacting the citizen but before he/she is permitted to take his/her grievance to the judicial branch. Further, this process is not a judicial process, rather it is a "quasi-judicial" process which is wholly within the executive department. In fact, in virtually every instance the same department against which the citizen has his/her dispute is the same executive department for which the "hearing examiner" works.

This would not necessarily be a problem except for one critical detail. The way the "administrative remedies process" actually works the aggrieved citizen never gets his/her day in court or a review of the substantive issues of his/her dispute. Instead, after the citizen has "exhausted" the administrative appeal process and is then "permitted" to appeal to the independent judicial branch -- i.e. the district court the only hearing is that of an "appeal" hearing. That is, the citizen never gets a chance to have the facts and the substantive issues in dispute heard before a judge or jury. The only review afforded is whether or not the "process" put in place by the agency for its "administrative remedies" were followed. In short the citizen NEVER GETS HIS/HER DAY in court.

This system is simply wrong. Every citizen is entitled to have a full court hearing on the merits and before a jury if appropriate when he/she has a grievance with his/her government.

This system is also wrong because it gives far too much power to those agencies that impose their rules and regulations on us. Currently the agencies are the judge, jury and final determiner of how their rules and regulations are imposed upon us.

I believe that if the voters adopt this proposal it will result in a much better administration of the laws, rules and regulations by our executive agencies. They will have to be cognizant of judicial oversight and be more judicious in the decisions they make. This will result in fewer, not more, grievances by citizens. And when there are grievances each citizen will again be guaranteed the

opportunity to have a FINAL judicial review of his or her grievance on the MERITS of his/her case. That currently is not available.

Today North Dakota supports TWO judicial systems, the constitutional judicial branch and the "quasi-judicial" structure within the executive branch. Both are costly. One gives every citizen his day in court on the merits of his case. The other denies the citizen his/her day in court and guarantees he/she does not have the merits of his dispute with his government heard.

This proposal DOES NOT ABOLISH the "administrative remedies process". Instead it will legitimize it by providing the citizen the option to access either at his choice.

This proposal will reduce the costs of giving citizens a full and fair review of their grievances with their government by permitting those who chose to skip the "administrative remedy" process and take their grievance directly to judicial review on the merits.

Finally, this will set North Dakota apart from every other state in the nation. North Dakota would be the only state that guarantees every citizen his/her day in court and a full judicial review on the merits of his/her case when they have a grievance with their government. I believe this is a distinction that North Dakota should be proud to have.

## HCR 3009

### Abolishing Mandatory Administrative Remedies

- One of the MOST fundamental rights every citizen has is getting his/her day in court when involved in a dispute with his/her government.
- Currently many, if not most, executive government agencies have established what is generally referred to as an "ADMINISTRATIVE REMEDIES PROCESS" for those who disagree with executive agency decisions impacting them.
- The purpose of our three branch governmental system is to place checks and balances on the power of government as it impacts individuals. The checks and balances purpose of our three branches of government is to PROTECT CITIZENS from the government actions and insure fairness to citizens. The judicial branch is the final determiner of the legitimacy and/or fairness of executive and legislative actions impacting individuals.
- The ADMINISTRATIVE REMEDIES process all too often thwart the rights of individuals to receiving their day in court. When the actions of the executive and/or legislative branches are shielded from a speedy, full and fair judicial review citizens are denied their fundamental due process rights and their right to judicial review of executive and legislative actions impacting them.
- These administrative remedy processes are not judicial hearings. Instead they are "quasi-judicial" hearings run by an executive and not a judicial branch entity. While these processes may operate under some of the same discovery and testimony procedures as in the judicial branch they are not judicial entities.
- The mandatory administrative remedy process is an obstacle placed in the path of a citizen who is not satisfied with a determination by an executive agency that impacts his/her rights. This process delays and often prohibits the citizen from ever having his or her day in court on the issue in dispute.
- Since the mid-30's, with the rapid growth of executive agencies (known as bureaucracies) and the tens of thousands of rules and regulations impacting the citizens daily life came what have become known as "administrative remedies". The "ADMINISTRATIVE REMEDY" process grew because of the often "technical" nature of the rules and regulations being imposed. It was thought that when there were disagreements it was better to leave resolution of those "with expertise" in the agency departments rather than send disputes directly to courts.
- Out of this reasonable beginning came what are today known as "mandatory administrative remedies". Today virtually every dispute a citizen has with a final determination of an executive agency is required to be "appealed" to a quasi-judicial hearing agent (often known as a hearing examiner) within the department the with which the individual is having the dispute.
- Often there are a series of appeals within the department that must be gone through --- not just ONE simple and expedited hearing.
- Only AFTER the "mandatory administrative remedies" have been "exhausted" is the individual permitted to take their dispute to the judicial branch. Unfortunately, in many, if not most cases under the current laws when the issue gets to the court the individual is not permitted to have the hearing on the substantive issues of his/her case. Instead, all the courts are permitted to do is review whether or not the process outlined in the



administrative rules was properly followed. If it is determined that the "process" was properly followed the citizen LOSES and the merits of his/her case NEVER receive a judicial review.

- The proposed CONSTITUTIONAL AMENDMENT does not abolish the "administrative remedy" process. In many instances this is and can be a very useful and valuable process. However, it does make this process voluntary. It permits an aggrieved citizen to either take his/her grievance through the "administrative remedy process" or take it directly to the judicial branch.
- The proposed amendment also guarantees that every individual with a grievance over the actions of an executive agency is granted a hearing on the merits (de novo) in court of his/her grievance with the executive agency.
- This amendment, if passed by the people, would **NOT result in additional costs** to state or local jurisdictions. The proposal does not create additional hearings, rather it permits the citizen to select the hearing venue of his/her choice – either the agency process or the judicial process.
- This would not result in a run on the courts. Instead it would likely result in fewer appeals (both administrative and judicial). This is because executive agencies would be much more careful in their determinations in the first instance, knowing that the courts would now be permitted to directly review the merits of the issues in dispute.
- Contrary to the belief of many, the cost and time to move through an administrative hearing is often no less than the cost and time to move through the judicial process. And the judicial process is FINAL. Being required to move through the "administrative" process to have a partial and inadequate judicial review is simply not fair to any citizen.
- Some argue that if this amendment were to become the law of North Dakota costs would skyrocket. A simple review of the facts will clearly show that this simply would not be the case. Currently, we have a very **LEAN and SMALL judicial branch** but a very **LARGE and CUMBERSOME hearing examiner structure within the executive branch**. The cost of paying the salaries of the current hearing examiner structure with its support personnel and space requirements is high and ever growing.
- If this proposal becomes the law in North Dakota for every appeal to the judicial branch there would be one less appeal within the hearing examiner structure of the executive branch.
- As mentioned earlier, if this proposal becomes the law of North Dakota, the executive agencies, when making decisions impacting individuals will be much more circumspect because of the citizen would have the option and the right to a full judicial branch review of those actions. I believe that executive agencies would make better decisions in the first instance resulting in fewer appeals in the first instance. The net result would most likely be lower costs.
- Whether the cost of insuring that every citizen having a grievance against a government agency were higher or lower because of the adoption of this proposal should not be a consideration --- the simple fact is **EVERY CITIZEN SHOULD BE ENTITLED TO HIS/HER DAY IN COURT WHEN HE/SHE HAS A GRIEVANCE AGAINST HIS/HER GOVERNMENT**. This proposal, if passed, would make that guarantee.

1/31/01

**Members of the House Judiciary Committee:**

I am sharing with you a copy of an e-mail I received (on 1/29/01) regarding another bill that was introduced in the North Dakota legislature. The purpose of sharing this with you is to highlight the fact that there are numerous companies that monitor what happens in the legislatures across the country. These companies are consulting companies, I have worked for one myself.

What they do is monitor not only what gets passed but what is introduced. They do it to gauge the "attitude" and assess what are called legislative/state policy positions and directions.

The conclusions and analyses they make are provided to their clients. Among these clients are business and industry executives and their staffs. The information is used to help them decide which states are healthy and positive for them to do business and/or locate operations and which are not likely candidates.

One of the things the clients of these consulting companies are looking for are indications of whether or not the state has a positive business climate. They do not simply listen to the rhetoric rather they assess the actual direction the states take. That is why following legislation is so vital for them. When they see positive legislation, from a business and industry point of view being rejected or agencies bill being routinely adopted flags are raised. When they see the opposite other flags are raised.

As you all know North Dakota is the only state in the nation that - since 1980 has lost population and job base. We should be asking why and carefully listening for answers to that question.

This proposed bill would send to the citizens an opportunity to change our State Constitution and guarantee that every citizen, including business citizen, has the right to have his/her day in court and have the totality of their grievance against their government heard by the court. Currently that is not the case here in North Dakota. Instead citizens are limited to only a review of the facts by the agencies with which they have a dispute. This bill if passed would give citizens a chance to decide if they want to maintain the status quo or to have the opportunity to have their day in court when they have a grievance with their government.

This bill if passed and if adopted by the citizens of North Dakota would make it clear that the policy in North Dakota is to give everyone, individual and business citizen alike their full fair day in court if and when they have a grievance with their government.

*Mr. Hale:*

*My name is Mark Wills and I am with Stateside Associates. We are a state government relations consulting firm based in Arlington, Virginia. Our primary business is monitoring state-level legislative and regulatory initiatives. One of the twelve states I currently track for the Environment and Agriculture Team is North Dakota and, as such, I am curious as to a bill you are a proponent of: H.B. 1299. Representative DeKrey recommended that I contact you for more information on this bill. I was wondering if you could help me understand what the dynamics of this resolution are; that is, what is/are the purpose(s) of the measure, is it controversial, do you expect it to be adopted, who else is pushing for/against the bill, etc.*

*Any information and/or insight you might be able to provide on this issue would be greatly appreciated. Thank you for your time.*

*Sincerely,  
Mark Wills  
Stateside Associates*

**Prepared and presented by:  
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# North Dakota Population Change Compared to the Nation 1990 - 2000

	STATE	APRIL 2000	APRIL 1990	POPULATION CHANGE	PERCENT CHANGE	NO TIMES LARGER THAN NO GROWTH
1	ALABAMA	4,447,100	4,040,389	406,711	10.1%	
2	ALASKA	626,932	550,043	76,889	14.0%	
3	ARIZONA	5,130,632	3,665,339	1,465,293	40.0%	
4	ARKANSAS	2,673,400	2,350,624	322,776	13.7%	
5	CALIFORNIA	33,871,648	29,811,427	4,060,221	13.6%	
6	COLORADO	4,301,281	3,294,473	1,006,788	30.6%	
7	CONNECTICUT	3,405,566	3,287,116	118,450	3.6%	
8	DELAWARE	783,600	666,168	117,432	17.6%	
9	DISTRICT OF COLUMBIA	572,059	606,900	(34,841)	-5.7%	
10	FLORIDA	15,982,378	12,938,071	3,044,307	23.5%	
11	GEORGIA	8,188,453	6,478,149	1,710,304	26.4%	
12	HAWAII	1,211,537	1,108,229	103,308	9.3%	
13	IDAHO	1,293,953	1,006,734	287,219	28.5%	84.48
14	ILLINOIS	12,419,293	11,430,602	988,691	8.6%	
15	INDIANA	6,080,485	5,544,156	536,329	9.7%	
16	IOWA	2,925,324	2,776,831	148,493	5.3%	43.87
17	KANSAS	2,688,416	2,477,588	210,830	8.5%	
18	KENTUCKY	4,041,769	3,686,892	354,877	9.6%	
19	LOUISIANA	4,468,976	4,221,826	247,150	5.9%	
20	MAINE	1,274,923	1,227,928	46,995	3.8%	
21	MARYLAND	5,296,436	4,780,753	515,683	10.8%	
22	MASSACHUSETTS	6,349,097	6,016,425	332,672	5.5%	
23	MICHIGAN	9,938,444	9,295,287	643,157	6.9%	
24	MINNESOTA	4,819,479	4,375,665	543,814	12.4%	159.95
25	MISSISSIPPI	2,844,556	2,575,475	269,081	10.4%	
26	MISSOURI	5,595,211	5,116,901	478,310	9.3%	
27	MONTANA	902,195	799,065	103,130	12.9%	30.33
28	NEBRASKA	1,711,283	1,578,417	132,866	8.4%	39.08
29	NEVADA	1,998,257	1,201,675	796,582	66.3%	
30	NEW HAMSHJIRE	1,235,736	1,109,252	126,484	11.4%	
31	NEW JERSEY	8,414,350	7,747,750	666,600	8.6%	
32	NEW MEXICO	1,819,046	1,515,069	303,977	20.1%	
33	NEW YORK	18,976,457	17,990,778	985,679	5.5%	
34	NORTH CAROLINA	8,049,313	6,632,448	1,416,865	21.4%	
35	NORTH DAKOTA	642,200	638,800	3,400	0.5%	N/A
36	OHIO	11,353,140	10,847,115	506,025	4.7%	
37	OKLAHOMA	3,450,654	3,145,576	305,078	9.7%	
38	OREGON	3,421,399	2,842,337	579,062	20.4%	
39	PENNSYLVANIA	12,281,054	11,882,842	398,212	3.4%	
40	RHODE ISLAND	1,048,319	1,003,484	44,835	4.5%	
41	SOUTH CAROLINA	4,012,012	3,486,310	525,702	15.1%	
42	SOUTH DAKOTA	754,844	698,004	56,840	8.5%	17.31
43	TENNESSEE	5,689,283	4,877,203	812,080	16.7%	
44	TEXAS	20,851,820	16,986,335	3,865,485	22.8%	
45	UTAH	2,233,169	1,722,850	510,319	29.6%	
46	VERMONT	608,327	582,758	25,569	8.1%	
47	VIRGINIA	7,078,515	6,189,197	889,318	14.4%	
48	WASHINGTON	5,894,121	4,866,869	1,027,252	21.1%	
49	WEST VIRGINIA	1,808,344	1,793,477	14,867	0.8%	
50	WISCONSIN	5,363,676	4,891,954	471,722	9.6%	
51	WYOMING	493,732	453,589	40,143	8.9%	11.82
	TOTALS	281,422,238	248,792,916	32,629,322	13.1%	