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Date

2003 JOINT CONSTITUTIONAL REVISION  
HCR 3005

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10/16/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3005

Joint Constitutional Revision Committee

☐ Conference Committee

Hearing Date January 29, 2003

Tape Number	Side A	Side B	Meter #
1	X		0-1145
Committee Clerk Signature <i>Elizabeth R. Green</i>			

Minutes: **CHAIR KRETSCHMAR:** Opened hearing on HCR 3005

**REP. BELTER:** Introduced Major General Haugen from the ND National Guard.

**MAJOR GENERAL HAUGEN:** Supports with written testimony

**SEN. MATHERN:** Supports with written testimony

**SEN. TRAYNOR:** In support. The National Guard has been a great asset to his community of Devils Lake and all of ND.

**COL. JERRY ENGLEMAN:** Went over General Haugen's testimony. The resolution brings the ND Constitution in line with the current structure of the National Guard. Would like this to be given to voters in the primary election of 2004. If the vote is affirmative, he would like to come back in 2005 to do housekeeping measure to update the Century Code.

**REP. ECKRE:** Would we be repealing the conscientious objector section? Col. Engleman said yes. Rep. Eckre wanted to know if they make exceptions or if the military has other provisions for them. Col. Engleman said the military does and the parameters are different for each case.

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Joint Constitutional Revision Committee

Bill/Resolution Number 3005

Hearing Date January 29, 2003

**SEN. SEYMOUR:** Will the word militia stay? Col. Engleman said they are looking at using other language, such as "military forces." There are inconsistencies within the resolution, but they could change the text to be consistent.

**REP. KRETSCHMAR:** How many guard members are there? Col. Engleman said there are 3400 Army Guard members and 1100 Air Guard members.

**SEN. NICHOLS:** Needed clarification on Section 17. Col. Engleman said it would be dropped completely.

**JOHN JACOBSEN (ND Vet Coord. and Council):** Supports resolution.

**CHAIR KRETSCHMAR:** Closed hearing on HCR 3004

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10/16/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3005

Senate Joint Constitutional Revision Committee

☐ Conference Committee

Hearing Date 02-05-03

Tape Number	Side A	Side B	Meter #
1	X		5800-6060
Committee Clerk Signature <i>Thomas A. Jones</i>			

Minutes:

**SENATOR TOLLEFSON** opened discussion on HCR 3005.

**Representative Hawken** moved a DO PASS. Seconded by Senator Nichols.

**Roll Call Vote:** 8 YES. 1 NO. 1 Absent.

**Carrier:** Representative Winrich.

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*10/16/03*  
Date

COPY

Date: 2/5/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Joint Constitutional Revision Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number HCR 3005

Action Taken Do Pass

Motion Made By Rep. Hawkin Seconded By Sen. Nichols

Representatives	Yes	No	Senators	Yes	No
Rep. Kretschmar, Co-Chair	✓		Sen. Tollefson, Co-Chair	✓	
Rep. Maragos	✓		Sen. Mutch		✓
Rep. Hawkin	✓		Sen. Kresbach	Absent	
Rep. Eckre	✓		Sen. Nichols	✓	
Rep. Winrich	✓		Sen. Seymour	✓	
<i>Both House (Hawkin) and Senate (Seymour) did Standing Committee Report. System would not allow me to do so. [Signature]</i>					

Total (Yes) 8 No 1

Absent 1

Floor Assignment (House) Rep. Winrich (Senate) Sen. Seymour

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

REPORT OF STANDING COMMITTEE (410)  
February 6, 2003 11:41 a.m.

Module No: HR-23-1823  
Carrier: Winrich  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HCR 3005: Joint Constitutional Revision Committee (Rep. Kretschmar, Chairman)  
recommends **DO PASS** (8 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HCR 3005  
was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-23-1823

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*Salvatore Rickford*  
Operator's Signature

*10/16/03*  
Date

REPORT OF STANDING COMMITTEE (410)  
February 27, 2003 12:14 p.m.

Module No: SR-35-3572  
Carrier: Seymour  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
HCR 3005: Joint Constitutional Revision Committee (Sen. Tollefson, Chairman)  
recommends DO PASS (8 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HCR 3005  
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-35-3572

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10/16/03  
Date



2003 JOINT CONSTITUTIONAL REVISION

CONFERENCE COMMITTEE

HCR 3005

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10/6/03  
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3005

Joint Constitutional Revision Committee

☒ Conference Committee

Hearing Date April 9, 2003

Tape Number	Side A	Side B	Meter #
1	X		0-53.2
Committee Clerk Signature <i>Elizabeth R. Guier</i>			

Minutes:

**Chair Maragos:** Opened discussion on HCR 3005.

**Rep. Kretschmar:** Asked the Senate members why the original resolution was rejected and the thought process on the new amendments.

**Sen. Tollefson:** Deferred to Sen. Cook.

**Sen. Cook:** Agrees with what the resolution wants to accomplish, but concerned with the way it was to be done. The language of males 18-45 needs to stay for drafting purposes. Those that do not serve when called shall pay an equivalent for a personal service and if we take the language out, they may not be able to do so. Has worked with Al Doorman and others in the National Guard and they brought forth SB 2420. 2420 was agreed to and now 3005 needs to be passed.

**Rep. Winrich:** As he understands history, we have never activated the militia and does not understand why the Senate needs to reference this in the Constitution.

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Joint Constitutional Revision Committee  
Bill/Resolution Number 3005  
Hearing Date April 9, 2003

**Sen. Cook:** Yes, the militia may never have been activated, but the militia fought the Revolutionary War and we should keep it in case something ever would happen. We have the state defense force and since we have so many active National Guard members gone now, we do have the ability to call the state defense force in case of a natural disaster.

**Rep. Winrich:** The original language of Section 17, lines 20-22 should take care of the activation. Why is it important to keep reference in the Constitution if we put it in code?

**Sen. Cook:** The problem was solved with Senate amendment .0200

**Rep. Kretschmar:** Believes the basic outlines of government should be in the Constitution and the details should be in statute. He liked 3005 because it simply stated military forces and repealed the rest and put it in code. 2420 puts them into code. Keep "militia" in the Constitution and then put reference to age and gender into the statutes. He has no objection to "militia" in the Constitution.

**Sen. Tollefson:** What is the difference between the militia and "military forces"? He would accept Kretschmar's above resolution.

**Rep. Maragos:** Could Sen. Cook explain the state defense force too?

**Sen. Cook:** Military forces are those in active militia. The active militia is the organized, equipped, and federally recognized forces under the provisions of the National Defense Act, meaning the National Guard. (see attached #1) As for the state defense force, we do not have an active one right now. However, the last thing we want is a backwoods "war game" militia thinking they are the state organized militia.

**Sen. Cook:** Males 18-45 are part of the militia, but not organized and trained until ordered to do so.

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Joint Constitutional Revision Committee

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**Sen. Nichols:** Worried about wording on lines 16-17. Does this not open up for training of the "backwoods" militia? Sen. Cook does not believe it would. Sen. Nichols just wants to make sure it is the National Guard who is in charge of the militia.

**Sen. Tollefson:** We need to look at what we want to accomplish, which is allowing females and individuals older than 45 to be in the National Guard. Does militia prohibit this? Sen. Cook does not believe so. The wording is clarified in 3005 amendments and in 2024.

**Rep. Maragos:** Does section 16 define militia in SB 2420?

**Rep. Winrich:** Line 17 "and consists..." is confusing to have consists twice in the sentence. Is it possible to volunteer for the militia, but not be active?

**Sen. Cook:** If you volunteer, you are active, not inactive.

**Rep. Maragos:** Is this a quirky tangle? Is the second "consists" what tangles it?

**Sen. Cook:** This was put together by legislative council and the Attorney General. The original language was not like this. Intent is meant to be the militia and active duty.

**Rep. Kretschmar:** If original HCR 3005 said "militia and military forces of this state" and then keep 2420, is it acceptable? Sen. Cook objected. Rep. Kretschmar asked if it would be good enough just to have it in statute.

**Sen. Cook:** This won't pass with the voters. We may not necessarily want to remove everything that is in the Constitution.

**Rep. Winrich:** What about the bill that referred to the Governor commissioning officers? Sen. Cook said the Adjutant General is appointed by the Governor and his rank comes from the federal government.

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Hearing Date April 9, 2003

**Sen. Cook:** HB 1177 was defeated because HCR 3005 should go to voters first. SB 2420 and HCR 3005 are complementary. Instead of repealing now, just do this much now and let the voters repeal later.

**Rep. Maragos:** The current resolution satisfies those who brought it to us, so he will support.

**REP WINRICH** moved for the House to accede to Senate amendments. **SEN. COOK** seconded the motion. Discussion follows.

**Rep. Winrich:** Asked Major General Haugen if SB 2420 is enacted, would this deal with the current language?

**Major General Haugen:** If legal action was brought forth, the lawyers would look to the Constitution, not the statutes. The Constitution does not include females or those over the age of 45. In response to an earlier question, General Haugen said that the U.S. Constitution grants the militia and requires the states to appoint the officers. "Militia" is organized and the Supreme Court has ruled that this is the National Guard. The unorganized militia consists of all males 18-45 in the state. The National Guard wants to change the Constitution in there is legal action. We need to get this by the voters and we need to leave "militia" in the Constitution. He is worried about Section 2 of the Constitution and the right to bear arms. Worried about voters thinking we will take away their guns. That is not the intent. He agrees it needs more, but not in one sweep because it is too complex right now.

**Rep. Maragos:** Are you comfortable with this amendment? General Haugen replied that he is. It comes down to what voters will accept.

**Rep. Maragos:** Never fears rejection by voters, but if the General is comfortable with the language, he will support.

*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

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**Sen. Tollefson:** Called the question. Motion passes.

**Vote: 2-4 motion fails.**

**Sen. Nichols:** Feels the original 3005 is still best. Feels this is awkward and that there are problems with the wording.

**Sen. Tollefson:** The practicality lies in the repeal section. Voters won't know what this is going to do, but they generally do not go for repeals. Amendments are more straightforward. There may be a conflict with states rights and the Constitution, but thinks we need to accomplish what the Guard wants.

**Rep. Kretschmar:** What if we leave 3005 and remove section 2 (the repeals).

**Sen. Cook:** Does that solve the discrimination? Kretschmar believes it does. Sen. Cook thinks this can all be done with SB 2420. The reason we have 3005 is because the National Guard and Attorney General want it in case of legal action. Would agree with Kretschmar's amendment, but feels it won't solve the National Guard's concern.

**Rep. Kretschmar:** Would not object to adding lines 17 and 18 from the Senate amendments to wherever they are needed in 3005.

**Rep. Maragos:** Asked for comments.

**Sen. Cook:** That's exactly what we are doing with the engrossed bill.

**REP WINRICH moved for the House to accede to Senate amendments. SEN.**

**TOLLEFSON seconded the motion.**

**Vote: 5-1-0 Motion passed.**

**Rep. Maragos:** Closed conference committee on HCR 3005.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3005

Senate Joint Constitutional Revision Committee

☒ Conference Committee

Hearing Date April 15, 2003

Tape Number	Side A	Side B	Meter #
1	X		0 - 1850
Committee Clerk Signature <i>Thomas A. Jander</i>			

Minutes:

**Chairman Maragos** opened the discussion on HCR 3005. The house voted not to accept our report, they felt we could do a better job. I have passed out a sheet of proposed amendments.

Are there any comments from the committee on the proposed amendments.

**Representative Kretschmar:** I think this is what most legislators wanted to do. I would move the amendments be adopted.

**Chairman Maragos:** Since we rejected the report, does that put us back. Do we have to accept the motion for the Senate to recede.

**Senator Tollefson:** Reading the amendment on Section 16, We describe the Reserve militia, we don't describe the active militia.

**Chairman Maragos:** In Senate Bill 2420, it defines the active militia. I believe that covers it.

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Senate Joint Constitutional Revision Committee  
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**Senator Cook:** We have a definition in code in SB 2420 for the active militia, we also have one for the Reserve militia. We have 2 groups, the active militia and the reserve militia, now what is our definition of military forces of this state.

**Chairman Maragos:** The militia will still be comprised of the same people that would ordinarily be able bodied male individuals between 18 and 45. We kept that in.

**Senator Tollefson:** If the reserve was activated, they would become part of the National Guard, is that correct.

**Chairman Maragos:** I assume that would be correct. When called to active service, they would have to become part of the active militia.

**Representative Winrich:** Known as the North Dakota National Guard and the Reserve militia when called to active service.

**Senator Cook:** That answers my question as I read this. It looks like we have the National Guard and the reserve militia. Would it be possible then that the reserve militia could be called to active service and not be part of the National Guard.

**Chairman Maragos:** If they got called to active service, then they would be active militia.

**Representative Winrich:** But they would not necessarily be National Guard. The National Guard is governed by Federal law. In the constitution, we are going to say the reserve militia of this state consists of all able bodied male individuals residing in the state, between the ages of 18 and 45, except those exempted by law.

**Chairman Maragos:** What we are doing in Section 1, we are putting in a definition of what the militia consists of. We believe we have to do that in order to identify the uniform service. This does it. WE put in the new Section 1, which says the militia of this state consists of the active



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militia and the reserve militia. In Section 16, it defines who comprises the reserve militia. In SB 2420 it defines the active militia.

**Senator Cook:** Does this solve the potential discrimination.

**Chairman Maragos:** As far as the National Guard is concerned, it does. Everyone I have talked to says this is an excellent solution to everybody's problems.

**Senator Cook:** Explain how changing the Constitution in this manner would have any impact on our fear for potential discrimination.

**Chairman Maragos:** The new added section that says what the militia consists of does not describe the militia. That comes in 2 other places. In Section 16, it describes the reserve militia that keeps in the Constitution the language describing and identifying one part of the militia as reserves, and kept the language in there. In statute, we define active militia which covers the Constitution from the standpoint of discrimination.

**Senator Cook:** I agree with you, but the explanation of discrimination is in statute.

**Chairman Maragos:** In Section 1, there is no discrimination. In Section 16, there is.

**Representative Winrich:** The proposed amendment would create this new section that defines the militia. The next section of the Constitution goes on to say, Section 17, that the militia shall be enrolled, organized and reformed in such a manner as provided by law. That refers you back to code for that definition. The active militia is defined in law, as the North Dakota National Guard and the reserve militia when activated. The National Guard is defined in law in Section 5, in sub paragraph 5 of SB 2420. That is where the National Guard is governed by Federal law, which includes anyone eligible under Federal law.

Salvatore Riccardi  
Operator's Signature

10/16/03  
Date

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**Senator Cook:** I have always felt that way. We have not changed it. If I was to point to a voter as to what it is we are changing, what is my argument for this.

**Chairman Maragos:** We are identifying the full militia. It is 2 separate, but integral parts.

**Senator Tollefson:** The reserve militia actually is discriminatory.

**Chairman Maragos:** It is currently that way. The only thing changing in the Constitution, with regards to the militia, the part that is discriminatory is now only referred to the reserve militia.

**Senator Tollefson:** is this an abuse of the laws of discrimination.

**Representative Kretschmar:** The reason for the proposed amendment to the Constitution. I think Section 17 currently is the Constitution. It also provides for non discrimination in there.

**Senator Cook:** This may be the solution. I would like to compare it to SB 2420.

**Chairman Maragos:** We thought it was a good idea, worthy of being considered by the committee as to the solution to both changes. I would certainly entertain the thought of adjourning now, to give everyone the opportunity to study this further.

**Representative Kretschmar:** Looking at current sections of the Constitution, and the proposal we have, it may be that we should say the active militia.

**Chairman Maragos:** After speaking with Legislative Council and interested parties, we are not that comfortable with either the House or Senate solutions. Lets take this back and have everybody review it.

**Senator Tollefson:** Could we have Gen. Haugen answer some questions. General, are you comfortable with this.

**General Haugen:** We are comfortable with it. We have been discussing and looking at it and I think with minimal language to present to the voters, is probably the easiest way to understand

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Senate Joint Constitutional Revision Committee

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the changes and eliminate the discrimination. The comment on Section 17, being changed to active militia. I looked that and thought at first that would be good, but if you separate 17 and 16, then 16 would only apply to the reserve militia. We think Section 17 should apply to all of the militia.

**Senator Cook:** The amendments we put on this, COL Dohrmann seemed pretty adamant about that.

**General Haugen:** Yes we discussed this, this morning over the telephone. He thinks this is the best we have come up with yet.

**Senator Nichols:** With regard to the reserve militia, is there a list of roll call, what we would consider to be the reserve militia. Is this kept in any way.

**General Haugen:** No we are not.

**Representative Winrich:** SB 2420 includes in Section 4, a definition of the National Guard reserve.

**Chairman Maragos:** I don't think National Guard reserve and the Army Reserve are the same component. The Army reserve is a Federal component. The National Guard is a Federal/State component. The reserve is the reserve and the Guard is our State constituted force. The Governor has no control over the reserve.

**General Haugen:** I think you are correct. I can get a couple of lawyers on this and get back to you with the answers.

**Chairman Maragos:** Are there any other questions. If not we will adjourn till tomorrow. You will be informed of the time, I hope we can come back in about the same time we did today.

**Closed conference committee on HCR 3005.**

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3005

Joint Constitutional Revision Committee

☒ Conference Committee

Hearing Date April 16, 2003

Tape Number	Side A	Side B	Meter #
1	X		0-1750
Committee Clerk Signature <i>Elizabeth R. Green</i>			

Minutes: **Rep. Maragos** called the Joint Constitutional Conference Committee to order.

**Rep. Kretschmar:** Amendment .0101 really does what we want in the Constitution. It distinguishes between active and reserve militia and is a good thing to present to voters.

**Sen. Cook:** Why is separating active from reserve so important?

**Rep. Kretschmar:** Believes this provides language to get away from discrimination based on gender and age. SB 2420 fits with section 17.

**Sen. Cook:** Believes both solutions (amendments) solve the problem of future litigation. Feels the Senate amendment solves it better. What matters is during the primary when people vote. Voters start with the mentality of voting No unless otherwise persuaded. We need to think of the voters. The Senate amendment is simple.

**Rep. Maragos:** Agrees that there is a necessity for a Constitutional amendment and that the measures on the ballot must be convincing. The responsibility of the committee is to get it on the

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ballot and it is the responsibility of those that want it to educate the voters. Believes .0102 does a better job of getting what we want to accomplish.

**Rep. Tollefson:** Our duty is to select the resolution that best fits. Has the Attorney General been contacted? (Rep. Maragos tried contacting him during meeting). Tollefson said that the committee needs someone of the Attorney General's stature to make the decision on which amendment is more defensible.

**Rep. Maragos:** (After a 30 minute recess) He visited with the Attorney General and was told both would improve our position if we were sued. Felt it is an issue for the committee to chose which amendment.

**Rep. Kretschmar:** Section 1 on .0102 is concise and clear regarding militia. Amendment to Section 16 is adding "reserve" on the first line. This is an excellent measure to put before the people.

**Vote: 4 Yes 2 No Motion fails for failure to get 2 votes from the Senate.**

**Sen. Cook moved for the House to accede to Senate amendments. Second by Sen.**

**Tollefson.**

**Vote: 2 Yes 4 No Motion fails for failure to get 2 votes from the House.**

**Committee adjourned until further notice.**

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3005

Joint Constitutional Revision Committee

☐ Conference Committee

Hearing Date April 17, 2003

Tape Number	Side A	Side B	Meter #
1	X		0-2119
Committee Clerk Signature <i>Elizabeth R. Fier</i>			

Minutes: **Rep. Maragos:** Called the meeting to order. Rep. Kretschmar has been replaced with Rep. Hawken.

**Sen. Tollefson:** Discussed amendment .0103. Identical to Maragos amendment .0102, except for two portions in section 16, which removes the "reserve" on the first line so that it just reads "the militia of this state..." and then add "and individuals who volunteer and are accepted." The rest of the language is like .0102. Basically, this clarifies some of the situations of concern. The militia is then both active and reserve.

**Sen. Tollefson moved adoption of amendments. Rep. Hawken seconded the amendment.**

**Rep. Hawken:** Why able bodied males? Is that because of the draft? Sen. Cook said yes.

**Rep. Winrich:** Does not understand the reason for taking out the limitation of Section 16 of the reserve militia. Isn't that what the intention is? The active militia is the National Guard and we do not want these restrictions to apply to guard members. Aren't we describing the reserve militia there?

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*10/16/03*  
Date

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Joint Constitutional Revision Committee

Bill/Resolution Number 3005

Hearing Date April 17, 2003

**Sen. Tollefson:** called General Haugen to the floor.

**General Haugen:** The militia of this state would then cover both active and reserve militia. The underlined portion (second change from above) would include those who volunteer for the National Guard. The militia would be comprised of the active and reserve. The reserve militia are all able bodied males 18-45 and the active would be the National Guard. Simply looking for language to move this along.

**Rep. Winrich:** We had considerable discussion in some of our previous meetings about not creating something that was so complicated that it wasn't understood. It seems that by not clarifying between the reserve and active militia muddies the water and makes it more difficult to understand how this might affect the National Guard and what the reserve militia really is. Is that a fair point?

**Gen. Haugen:** There are opinions both ways. He feels the first one was more simple to understand, however, he doesn't feel it was going anywhere and he is trying to get this to pass. We have 1201 members in the National Guard today who, according to the Constitution, are not qualified to be there. 345 are over in Iraq right now. I think they deserve something better.

**Rep. Hawken:** Are people going to understand this? Can you assure me they will vote for it?

**Gen. Haugen:** If you look at how we get to have a militia, the U.S. Constitution says that each state will have the military force. We are authorized by the Constitution. The Constitution also says that to be in the militia, you will be a male, 18-45. Our Constitution mirrors the U.S. Constitution, except that in the active militia, which is the National Guard according to U.S. Law, an involuntary member of the militia is a male resident, 18-45. That is the same part that allows us to have a draft of only males. Now the problem comes from that the National Guard is

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Hearing Date April 17, 2003

part of the militia, not all of the militia. Our Constitution does not differentiate and that is why we are discriminatory. There is the problem. How do we best change the Constitution to reflect current views, nondiscriminatory view, while preserving the militia clause for those that do not have a choice to be in the militia. That is where we are stuck on language.

**Rep. Maragos:** Brought up SB 2420, which defines militia and active militia.

**Sen. Cook:** The Attorney General said that both amendments would equally solve the problem. Question is which is easier to sell to the voters. General Haugen, which is easiest to explain to the voters? Gen. Haugen said .0102 would be easiest to sell.

**Sen. Tollefson:** .0103 covers the discrimination portion.

**Gen. Haugen:** .0103 is better than the original Senate amendments because there were two "consists" which caused problems (line 17). In .0103 we do not define the reserve militia.

**Rep. Maragos:** Would it be confusing to insert "reserve militia" into .0103? Or would that be confusing with the other added section? Is it contradictory? Gen. Haugen said it is not contradictory because you could have people volunteer for the reserve militia. Rep. Maragos then said he doesn't want to confuse the issue. The word reserve is appropriate in Section 16, but not necessary. Gen. Haugen said that if you reinsert "reserve" then you are strictly talking about the reserve militia. And then you would take people who want to be in the reserve, but not 18-45. You are not defining the National Guard if you insert "reserve." I think it does change it.

**Sen. Tollefson:** I would agree with adding "reserve."

**Rep. Maragos:** Then SB 2420 kicks in to answer the other questions. Then it is compatible.

**Sen. Tollefson** moved to amend the amendment by adding "reserve" before militia. Second by Sen. Nichols.



Page 4  
Joint Constitutional Revision Committee  
Bill/Resolution Number 3005  
Hearing Date April 17, 2003

**Voice Vote: Amendment to the amendment adopted.**

**Sen. Cook:** We can see how quickly this issue can become confusing. It would be nice if they went through the chambers unanimously.

**Rep. Maragos:** The original amendment from the House passed. Sen. Tollefson brought forth a good amendment that is a good compromise.

**Sen. Cook:** Will vote for this in committee because the General wants it, but he cannot guarantee that the whole Senate will vote for it.

**Vote on amendment .0103**

**6 Yes 0 No 0 Absent and not voting**

**Amendment passes out of conference committee**

*La Costa Rickford*  
Operator's Signature

*10/16/03*  
Date

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420  
=====

07398

(Bill Number) 3005 (, as (re)engrossed):

Your Conference Committee

For the Senate:	1st	2nd
<u>Tollefson</u>	Y	Y
<u>Cook</u>	Y	Y
<u>Nichols</u>	N	Y

For the House:	1st	2nd
<u>Maragos</u>	N	Y
<u>Kutschman</u>	N	N
<u>Winnich</u>	N	Y

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724 725/726 8724/8726 8723/8725  
the (Senate/House) amendments on (SJ/HJ) page(s) 1292 - 1293

☒ and place 3005 on the Seventh order.  
727

☐ , adopt (further) amendments as follows, and place  
\_\_\_\_\_ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

=====

DATE: 4/9/2003

CARRIER: Maragos

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

=====

(1) LC (2) LC (3) DESK (4) COMM.

Salvatore Riccardi  
Operator's Signature

10/16/03  
Date

**REPORT OF CONFERENCE COMMITTEE (420)**  
April 10, 2003 9:29 a.m.

Module No: SR-65-7292

Insert LC: .

**REPORT OF CONFERENCE COMMITTEE**

**HCR 3005:** Your conference committee (Sens. Tollefson, Nichols, Cook and Reps. Maragos, Kretschmar, Winrich) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 1292-1293 and place HCR 3005 on the Seventh order.

HCR 3005 was placed on the Seventh order of business on the calendar.

(2) DESK, (2) COMM

Page No. 1

SR-65-7292

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*La Costa Rickford*  
Operator's Signature

*10/6/03*  
Date

38077.0102  
Title.

Prepared by the Legislative Council staff for  
Representative Maragos  
April 15, 2003

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3005

That the Senate recede from its amendments as printed on pages 1292 and 1293 of the House Journal and pages 1135 and 1136 of the Senate Journal and that House Concurrent Resolution No. 3005 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to article XI of the Constitution of North Dakota, relating to the militia; to amend section 16 of article XI of the Constitution of North Dakota, relating to the definition of the state's reserve militia; and to provide an effective date.

STATEMENT OF INTENT

This measure clarifies the distinction between active militia and reserve militia.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article XI and amendment of section 16 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article XI of the Constitution of North Dakota is created and enacted as follows:

The militia of this state consists of the active militia and the reserve militia.

**SECTION 2. AMENDMENT.** Section 16 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 16.** The reserve militia of this state ~~shall consist~~ consists of all able-bodied male ~~persons~~ individuals residing in the state, between the ages of eighteen and forty-five years, except ~~such as may be~~ individuals exempted by the laws of the United States or of this state. ~~Persons~~ Individuals whose religious tenets or conscientious scruples forbid them to bear arms ~~shall~~ may not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

**SECTION 3. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on August 1, 2004."

Renumber accordingly

=====

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420

=====

07398

(Bill Number) 3005 (, as (re)engrossed): mean

Your Conference Committee

*1st amendment .0102  
2nd to accede to Senate*

<u>A</u> For the Senate:				<u>A</u> For the House:			
<u>✓</u> Tolleson	N	Y		<u>✓</u> Narago	Y	N	
<u>✓</u> Cook	N	Y		<u>✓</u> Bretschmer	Y	N	
<u>✓</u> Nichols	Y	N		<u>✓</u> Winn	Y	N	

☐ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724 725/726 8724/8726 8723/8725  
the (Senate/House) amendments on (SJ/HJ) page(s) \_\_\_\_\_ - \_\_\_\_\_

☐ and place \_\_\_\_\_ on the Seventh order.  
727

☐ , adopt (further) amendments as follows, and place  
\_\_\_\_\_ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

DATE: 04/16/03

CARRIER: \_\_\_\_\_

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

38077.0103  
Title.

Prepared by the Legislative Council staff for  
Senator Tollefson  
April 17, 2003

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3005

That the Senate recede from its amendments as printed on pages 1292 and 1293 of the House Journal and pages 1135 and 1136 of the Senate Journal and that House Concurrent Resolution No. 3005 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to article XI of the Constitution of North Dakota, relating to the militia; to amend section 16 of article XI of the Constitution of North Dakota, relating to the definition of the state's militia; and to provide an effective date.

STATEMENT OF INTENT

This measure clarifies the definition of militia.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article XI and amendment of section 16 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article XI of the Constitution of North Dakota is created and enacted as follows:

The militia of this state consists of the active militia and the reserve militia.

**SECTION 2. AMENDMENT.** Section 16 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 16.** The militia of this state ~~shall consist~~ consists of all able-bodied male ~~persons~~ individuals residing in the state, between the ages of eighteen and forty-five years and individuals who volunteer and are accepted, except ~~such as may be~~ individuals exempted by the laws of the United States or of this state. ~~Persons~~ Individuals whose religious tenets or conscientious scruples forbid them to bear arms ~~shall may~~ not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

**SECTION 3. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on August 1, 2004."

Renumber accordingly

38077.0104  
Title.0300

Adopted by the Conference Committee  
April 17, 2003

**Conference Committee Amendments to HCR3005 - 04/17/2003**

That the Senate recede from its amendments as printed on pages 1292 and 1293 of the House Journal and pages 1135 and 1136 of the Senate Journal and that House Concurrent Resolution No. 3005 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to article XI of the Constitution of North Dakota, relating to the militia; for the amendment of section 16 of article XI of the Constitution of North Dakota, relating to the definition of the state's militia; and to provide an effective date.

**STATEMENT OF INTENT**

This measure clarifies the definition of militia.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article XI and amendment of section 16 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article XI of the Constitution of North Dakota is created and enacted as follows:

The militia of this state consists of the active militia and the reserve militia.

**SECTION 2. AMENDMENT.** Section 16 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 16.** ~~The reserve militia of this state shall consist~~ consists of all able-bodied male ~~persons~~ individuals residing in the state, between the ages of eighteen and forty-five years and individuals who volunteer and are accepted, except ~~such as may be~~ individuals exempted by the laws of the United States or of this state. ~~Persons~~ Individuals whose religious tenets or conscientious scruples forbid them to bear arms ~~shall~~ may not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

**SECTION 3. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on August 1, 2004."

Renumber accordingly

=====
REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420
=====

07398

(Bill Number) 2005 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Tollefson Y
Cook Y
Nichols Y

For the House:

Maragos Y
Hawken Y
Winnick Y

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
the (Senate/House) amendments on (SJ/HJ) page(s) 1292 - 1293

and place on the Seventh order.

(adopt) (further) amendments as follows, and place
3005 on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed.

((Re)Engrossed) was placed on the Seventh order of business on the
calendar.

DATE: 04 / 17 / 03

CARRIER: Maragos

LC NO. of amendment

LC NO. of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

(1) LC (2) LC (3) DESK (4) COMM.

Operator's Signature

10/16/03
Date



REPORT OF CONFERENCE COMMITTEE (420)  
April 17, 2003 4:26 p.m.

Module No: HR-70-7887

Insert LC: 38077.0104

**REPORT OF CONFERENCE COMMITTEE**

**HCR 3005:** Your conference committee (Sens. Tollefson, Cook, Nichols and Reps. Maragos, Hawken, Winrich) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1292-1293, adopt amendments as follows, and place HCR 3005 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1292 and 1293 of the House Journal and pages 1135 and 1136 of the Senate Journal and that House Concurrent Resolution No. 3005 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to article XI of the Constitution of North Dakota, relating to the militia; for the amendment of section 16 of article XI of the Constitution of North Dakota, relating to the definition of the state's militia; and to provide an effective date.

**STATEMENT OF INTENT**

This measure clarifies the definition of militia.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article XI and amendment of section 16 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article XI of the Constitution of North Dakota is created and enacted as follows:

The militia of this state consists of the active militia and the reserve militia.

**SECTION 2. AMENDMENT.** Section 16 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 16.** The reserve militia of this state ~~shall consist~~ consists of all able-bodied male ~~persons~~ individuals residing in the state, between the ages of eighteen and forty-five years and individuals who volunteer and are accepted, except such as may be ~~individuals~~ individuals exempted by the laws of the United States or of this state. ~~Persons~~ Individuals whose religious tenets or conscientious scruples forbid them to bear arms ~~shall~~ may not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

**SECTION 3. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on August 1, 2004."

Renumber accordingly

HCR 3005 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE (420)  
April 17, 2003 4:26 p.m.

Module No: SR-70-7887

Insert LC: 38077.0104

**REPORT OF CONFERENCE COMMITTEE**

**HCR 3005:** Your conference committee (Sens. Tollefson, Cook, Nichols and Reps. Maragos, Hawken, Winrich) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1292-1293, adopt amendments as follows, and place HCR 3005 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1292 and 1293 of the House Journal and pages 1135 and 1136 of the Senate Journal and that House Concurrent Resolution No. 3005 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the resolution with "to create and enact a new section to article XI of the Constitution of North Dakota, relating to the militia; for the amendment of section 16 of article XI of the Constitution of North Dakota, relating to the definition of the state's militia; and to provide an effective date.

**STATEMENT OF INTENT**

This measure clarifies the definition of militia.

**BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA,  
THE SENATE CONCURRING THEREIN:**

That the following proposed new section to article XI and amendment of section 16 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

**SECTION 1.** A new section to article XI of the Constitution of North Dakota is created and enacted as follows:

The militia of this state consists of the active militia and the reserve militia.

**SECTION 2. AMENDMENT.** Section 16 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

**Section 16.** The ~~reserve~~ militia of this state ~~shall consist~~ consists of all able-bodied male ~~persons~~ individuals residing in the state, between the ages of eighteen and forty-five years and individuals who volunteer and are accepted, except ~~such as may be~~ individuals exempted by the laws of the United States or of this state. ~~Persons~~ Individuals whose religious tenets or conscientious scruples forbid them to bear arms ~~shall~~ may not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

**SECTION 3. EFFECTIVE DATE.** If approved by the voters, this measure becomes effective on August 1, 2004."

Renumber accordingly

HCR 3005 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

HCR 3005

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Salvatore Riccardi  
Operator's Signature

10/6/03  
Date

TESTIMONY OF

Senator Tim Mathern  
Joint Constitutional Revision Committee  
January 29, 2003

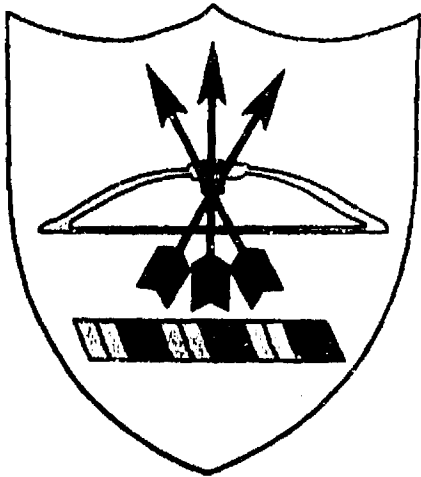
HOUSE CONCURRENT RESOLUTION 3005

Mr. Chairman and Members of the Committee

I am Senator Tim Mathern from Fargo North Dakota. This Resolution proposes to amend the North Dakota Constitution to reflect current requirements for membership in the National Guard. In the past 50 years the Guard's role in national defense, as well as who is in the Guard, have both expanded, making this change necessary. Members of the Guard will go through the details with you.

Mr Chairman and members of the Committee, it is a tribute to the Guard that even as they deal with international conflict and lead North Dakota men and women in the present mobilization, they also take the time to deal with issues of the rule of law. This bill is an example of this important ingredient of democracy in action.

I ask for your support of HCR 3005.



*Army National Guard*  
*"The Straight Arrows"*



*Air National Guard*  
*"The Happy Hooligans"*

*The*  
***North Dakota***  
***National Guard***

***Testimony of***  
***Major General Michael Haugen***  
***before the***  
***Government and Veterans Affairs Committee***  
***January 29, 2003***  
***3:00 p.m.***  
***HOUSE CONCURRENT RESOLUTION 3005***

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*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

TESTIMONY OF  
MAJOR GENERAL MICHAEL HAUGEN, THE ADJUTANT GENERAL  
NORTH DAKOTA NATIONAL GUARD

BEFORE THE  
GOVERNMENT AND VETERANS AFFAIRS COMMITTEE

January 29, 2003

3:00 p.m.

HOUSE CONCURRENT RESOLUTION 3005

Mr. Chairman, Members of the Committee, good afternoon.

This Resolution proposes to amend our Constitution to reflect current requirements for membership in the National Guard, and brings our state Constitution into accord with the Federal Constitution. This Resolution also proposes to repeal several sections within our Constitution that are provided for under statutory law. This Resolution, if approved by the Legislative Assembly, and by the voters of this state, will simply state that the Legislative Assembly will provide for the military forces of this state. This will provide our state with the flexibility to change with the times.

One section of our Constitution is arguably unconstitutional under the Federal Constitution. Section 16 of Article XI places limits on membership in the military forces of this state. As currently written, this Section limits membership in the National Guard to male residents between the ages of 18 and 45. This puts our Constitution at odds with the Federal Constitution, law and regulation. Under Federal rules, and societal norms, we must allow qualified applicants, regardless of age, gender or residence, to join the North Dakota National Guard. The reality is that we do not follow our Constitution, since a large percentage of our force is female, over the age of 45, or residents of another state. The fact of the matter is that we would not have an adequate, trained force to respond to State and Federal emergencies without these soldiers and airmen.

In regard to limiting membership based on residency, the 10<sup>th</sup> United States Circuit Court of Appeals has held that it is unconstitutional to restrict membership in the National Guard based on residency, finding that such restrictions violate inherent rights to cross-border employment (Privileges and Immunities Clause). *Nelson v. Geringer*, 295 F.3d 1082 (10<sup>th</sup> Cir. 2002). Arguably, our restrictions based on gender and age could also violate the Federal Constitution.

I can assure this Committee that we have given this Resolution serious thought over the last several years. We staffed this matter both within and outside of our organization, and finally

came to the determination that we needed to amend the Constitution. In the year 2003, it is intolerable to discriminate against any individual on the basis of residency, gender or age.

This Resolution also proposes the repeal of all but one of the military forces section within Article XI of the Constitution. These sections, which I have not already addressed, are: Section 18, which gives this Legislative Assembly the power to establish a militia (a power it would retain in the proposed Resolution); Sections 19 and 20, which address the commissioning of officers (again, a power this Legislative Assembly would retain under the proposed Resolution and currently covered by Chapter 37-04); and, Section 21, which provides militia members with privilege from arrest under certain circumstances (Covered by N.D. Cent. Code § 37-01-11).

When our Constitution was drafted, limiting National Guard membership to male residents likely made sense; however, in the past 50 years the Guard's role in national defense, as well as the role women play in the Guard, have both expanded, making our current Constitution obsolete. Since we do not know what the future holds, we believe it is appropriate and necessary to give this Assembly the capability to change with the times, without another Constitutional Amendment. As stated in the Resolution, we would like this measure presented to the voters of North Dakota in the 2004 primary election.

I would be pleased to respond to any questions, Mr. Chairman.

12

**CONSTITUTION OF NORTH DAKOTA (2001)**

**Article V—Executive Branch**

Section 7. . . . The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and maintain order. . .

**Article XI—General Provisions**

Section 16. The militia of this state shall consist of all able-bodied male persons residing in the state, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States or of this state. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

Section 17. The militia shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by law, not incompatible with the constitution or laws of the United States.

Section 18. The legislative assembly shall provide by law for the establishment of volunteer organizations of the several arms of the service, which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this state except the army of the United States, without the proclamation of the governor of the state.

Section 19. All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide.

Section 20. The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office except by sentence of court-martial, pursuant to law.

Section 21. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from the same.



LR

CONSTITUTION OF THE UNITED STATES

Article 1—The Congress

Section 8. The Congress has the power:

... To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the and naval forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the state respectively the appointment of the officers and the authority of training the militia, according to the discipline prescribed by Congress. ...

Article 2—The Executive

Section 2. The president shall be commander-in-chief of the army and navy of the United States, and the militia of the several states when called into the actual service of the United States. ...

Attach #1

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2420  
(Senator Cook)  
(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact sections 37-01-01, 37-02-01, 37-02-02, and 37-08-01 of the North Dakota Century Code, relating to the militia.

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

**SECTION 1. AMENDMENT.** Section 37-01-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-01-01. Definitions.** In this title, unless the context or subject matter otherwise requires:

1. "Active militia" ~~consists of~~ means the organized and uniformed military forces of this state, ~~which must be known as the "North Dakota national guard" and the reserve militia when called to active service.~~
2. "Active service" means ~~service on behalf of the state~~ active duty in case of public disaster, riot, tumult, breach of the peace, resistance of process, or the threat thereof, whenever called in aid of civil authorities, or under martial law, or at encampments, whether ordered by state or federal authorities, and includes the performance of any other duty requiring the entire time of the organization or person, except when called or drafted into the federal service by the president of the United States. ~~Such~~ The term includes service in case of, or to prevent, insurrection, riot, or invasion under the order of the commander in chief communicated through proper military channels.
3. ~~"Battalion" includes a "squadron" of cavalry, and of the air service as well as a battalion of infantry, artillery, engineers, and signal corps.~~
4. ~~"Company" includes a company of infantry, engineers, and signal corps, an air unit, a battery of field artillery, a troop of cavalry, or any similar organization in any branch of the military service authorized by federal law for this state, including a permanent detachment.~~
5. ~~"Defense department" includes the department of army and the department of air force.~~
6. ~~"In service of the United States" and "not in the service of the United States" have the same meaning as such terms have as used in the National Defense Act (Pub. L. 64-85; 39 Stat. 166), approved June 3, 1916, and in amendments thereto.~~
7. ~~"Militia" means the forces provided for in the Constitution of North Dakota, and is divided into two classes designated as the active militia and the reserve militia.~~
8. ~~"Military forces of this state" consists of means those persons subject to military duty individuals in the active militia as defined in the Constitution of North Dakota and those persons subject to duty in the national guard as defined in the National Defense Act of the United States of America.~~
4. "Militia" means a group of individuals defined in the Constitution of North Dakota.
9. 5. "National guard" means that part of the military ~~force~~ forces of this state which is organized, equipped, and federally recognized under the provisions of the National Defense Act, as amended, of the United States as the "national guard, air national guard,

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La Costa Rickford  
Operator's Signature

10/6/03  
Date

of the United States and the state of North Dakota". ~~It~~ The term includes also the term "national guard of the state of North Dakota".

40. 6. "On duty" includes periods of drill and of such other training and service as may be required under state or federal law, regulation, or order.
44. 7. "Reserve militia" consists of all those ~~persons~~ individuals who are subject to service in the active militia, ~~but~~ and who are not serving in the national guard of this state.
8. "State active duty" means active service on behalf of the state under authority of the governor at the expense of the state.
9. "State defense force" means the group of individuals in the reserve militia in state active duty under chapter 37-12.1.

**SECTION 2. AMENDMENT.** Section 37-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-02-01. Militia - How constituted - Exceptions.** All able-bodied male citizens, and all able-bodied ~~persons~~ males of foreign birth who have declared ~~their~~ an intention to become citizens, who are ~~more than~~ between the ages of eighteen, and ~~less than~~ forty-five years of age, and who are residents of this state, and other volunteers allowed by law constitute the militia, unless exempted by the laws of the United States, or by the laws of this state.

**SECTION 3. AMENDMENT.** Section 37-02-02 of the North Dakota Century Code is amended and reenacted as follows:

**37-02-02. North Dakota national guard - Composition.** The North Dakota national guard consists of the regularly enlisted and enrolled ~~male citizens~~, members within the age limits prescribed by the ~~National Defense Act of 1920, as it may be amended~~ federal law; organized, armed, and equipped as provided in this title, and of commissioned officers within the ages conforming to the rules and regulations promulgated by the department of the army and department of the air force as conditions precedent to federal recognition. ~~The governor may authorize the appointment or enlistment of female citizens of the state in the medical corps, nurses corps, and other noncombatant branches and services of the national guard, and while so serving, they have the same status as male members of the national guard. Such national guard must be composed of such units as the defense department of the United States may allocate and designate, with the approval of the governor of this state.~~

**SECTION 4. AMENDMENT.** Section 37-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**37-08-01. National guard reserve - Organization.** The national guard reserve is all individuals who are subject to service in the national guard and are not serving in the national guard of this state. Subject to ~~such~~ the rules and regulations ~~as of the president may prescribe~~, a national guard reserve must be maintained in this state which ~~shall consist~~ consists of ~~such~~ organizations, officers, and enlisted ~~men~~ members as the president may prescribe, ~~or~~ and members thereof of the reserve may be assigned as reserves to an active organization of the national guard.