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Operator's Signature

10/6/03  
Date

2003 JOINT CONSTITUTIONAL REVISION

HCR 3071

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10/16/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3071

Senate Joint Constitutional Revision Committee

☐ Conference Committee

Hearing Date 02-27-03

Tape Number	Side A	Side B	Meter #
1		X	1900-4650
Committee Clerk Signature <i>Thomas A. Jandt</i>			

Minutes:

**SENATOR TOLLEFSON** opened the hearing on HCR 3071.

**REPRESENTATIVE BRUSEGAARD** The resolution you have in front of you may look familiar. There was one dealing with the same section introduced two weeks ago. There was a Do Not Pass recommendation on that previous bill. This resolution gives this committee another option.

**REPRESENTATIVE KASPER** My interest in HCR 3071 stems from a number of sources.

(1) I believe the constitution is a document to be held in the highest esteem. (2) I think the things that have happened in Fargo in recent time have given me more interest in this resolution. Fargo citizens decided they needed a zoo. It was put on the ballot, and 75% of the citizens voted NO. They had a private fund raiser, and we now have a zoo. When the lease was signed with the Fargo Park District, they did not read the lease very close and now the zoo owes the Fargo Park district \$160,000.00 and they can't pay. They have gone to court over the last several months

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*Yolanda Richardson*  
Operator's Signature

*10/16/03*  
Date

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Senate Joint Constitutional Revision Committee

Bill/Resolution Number HCR 3071

Hearing Date 02-27-03

and have looked for ways the city or the Park district to bail them out. They requested an Attorney General's opinion. The Attorney General's staff issued an opinion a couple weeks ago. The city and the park district are concerned that this transaction may be considered a donation prohibited by the North Dakota Constitution Article 10. The Attorney General's opinion is the forgiveness of the zoo debt by the park district for special assessments under its lease and funding by the city of the special assessments of the park district under tax increment financing is not a donation in violation of the state constitution, if an ordinance is passed by the city. To me this is a direct circumvention of the constitution of North Dakota.

**REPRESENTATIVE MARAGOS** Does the constitution specifically prohibit the tasking of an ordinance to accomplish what the Attorney General said could be accomplished.

**REPRESENTATIVE KASPER** That is an interesting question. It does talk about some areas that may or may not be allowed. We cannot subscribe to become the owners of capital property.

**SENATOR MUTCH** Is Fargo a city under home rule.

**REPRESENTATIVE KASPER** Yes they do have a home rule charter.

**REPRESENTATIVE WINRICH** You are obviously concentrating on the 2nd clause of section 18. What is your opinion of the 1st clause.

**REPRESENTATIVE KASPER** I believe that was put in there to allow the State Mill & Elevator to be owned by the state of North Dakota. It says may engage in any industry enterprise or business, but it does not say to give money away to a zoo.

**REPRESENTATIVE MARAGOS** Does it prohibit the giving of money in the performance of the engagement.

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Senate Joint Constitutional Revision Committee

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**REPRESENTATIVE KASPER** Let me quote, "Neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual or association". I think that is pretty clear.

**CURLY HAUGLAND** I am a citizen of Bismarck, ND. I have no written testimony, because earlier SCR 4017 is essentially the same material I had for that bill. I would suggest several changes to this bill, namely line 15, 16, 17, and 21. You could honor the voters by giving them the opportunity to have a multiple choice.

**REPRESENTATIVE HAWKEN** How would this, if passed, affect economic development.

**CURLY HAUGLAND** It would make it very difficult.

**REPRESENTATIVE MARAGOS** I have focused on the word "poor" in the constitution, do you believe that was interpreted broadly or narrowly. Does it just mean poor people, poor businesses, poor losers or what.

**CURLY HAUGLAND** I believe it means welfare. I think that is pretty clear.

**SENATOR TOLLEFSON** Is there any opposition to HCR 3071.

**BILL WOCKEN** I am the city administrator for the city of Bismarck and I am here in opposition to HCR 3071. The city of Bismarck asks for a Do Not Pass. (Testimony Attached).

**JERRY HJELMSTAD** ND League of Cities. I don't think it is fair that we should expect our public officials to be constitutional experts. Language says that public officials who appropriate public funds in violation of this section would be guilty of a crime. What type of crime would the person be guilty of a crime. I would ask a Do Not Pass on this resolution.

**SENATOR TOLLEFSON** Mr. Haugland, you had indicated the possibility of some amendments.

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Senate Joint Constitutional Revision Committee

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Hearing Date 02-27-03

**CURLY HAUGLAND** Yes, I will have it prepared, and happy to work with committee.

**Senator Tollefson** closed the hearing on HCR 3071.

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10/16/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3071

Joint Constitutional Revision Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
1	X		3152-3950

Committee Clerk Signature

*Elizabeth R. Grew*

Minutes: **Chair Kretschmar:** Opened discussion on HCR 3071

**Curly Haugland:** Offered amendments.

Rep. Maragos moved adoption of the amendments. 2nd by Hawken

**Voice Vote: Amendments adopted**

Rep. Winrich moved DNP as amended. 2nd by Sen. Seymour

**Vote: 7 Yes 3 No 0 Absent and not voting**

**Carrier: Rep. Winrich**

**Sen. Krebsbach**

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*Sal Costa Rickford*  
Operator's Signature

*10/16/03*  
Date

33107.0101  
Title.0200

Prepared by the Legislative Council staff for  
Representative Kasper  
March 5, 2003

**House Amendments to HCR3071 - Joint Constitutional Revision Committee 03/06/2003**

Page 1, line 15, overstrike "engage in" and insert immediately thereafter "own and operate" and overstrike ", not prohibited by article XX of the"

Page 1, line 16, overstrike "constitution, but neither" and insert immediately thereafter "if the profits are deposited in the general fund of the state, county, or city. Neither" and remove "of the state may"

Page 1, line 17, overstrike "otherwise" and insert immediately thereafter "of the state may"

Page 1, line 21, replace "and the attorney general" with ". The state auditor" and replace "prosecute" with "investigate each complaint of the appropriation of public funds contrary to this section, and if the investigation discloses an apparent violation of this section, the state auditor shall refer the matter to the proper authority for prosecution"

Page 1, line 22, remove "the crime"

Renumber accordingly



Date: 3/5  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3071

House Joint Constitutional Revision Committee

☐ Check here for Conference Committee

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

Action Taken DNP as amended

Motion Made By Winnich Seconded By Seymour

Representatives	Yes	No	Senators	Yes	No
Rep. Kretschmar, Chair		✓	Sen. Tollefson, Co-Chair		✓
Rep. Maragos	✓		Sen. Mutch		✓
Rep. Hawken	✓		Sen. Krebsbach	✓	
Rep. Eckre	✓		Sen. Nichols	✓	
Rep. Winnich	✓		Sen. Seymour	✓	

Total (Yes) 7 No 3

Absent \_\_\_\_\_

Floor Assignment Winnich Krebsbach

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

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Loiseta Rickford  
Operator's Signature

10/16/03  
Date

REPORT OF STANDING COMMITTEE (410)  
March 6, 2003 12:54 p.m.

Module No: HR-40-4096  
Carrier: Winrich  
Insert LC: 33107.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HCR 3071: Joint Constitutional Revision Committee (Rep. Kretschmar, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO NOT PASS** (7 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HCR 3071 was  
placed on the Sixth order on the calendar.

Page 1, line 15, overstrike "engage in" and insert immediately thereafter "own and operate"  
and overstrike ", not prohibited by article XX of the"

Page 1, line 16, overstrike "constitution, but neither" and insert immediately thereafter "if the  
profits are deposited in the general fund of the state, county, or city. Neither" and  
remove "of the state may"

Page 1, line 17, overstrike "otherwise" and insert immediately thereafter "of the state may"

Page 1, line 21, replace "and the attorney general" with ". The state auditor" and replace  
"prosecute" with "investigate each complaint of the appropriation of public funds  
contrary to this section, and if the investigation discloses an apparent violation of this  
section, the state auditor shall refer the matter to the proper authority for prosecution"

Page 1, line 22, remove "the crime"

Renumber accordingly

2003 TESTIMONY

HCR 3071

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Salvatore Riccio  
Operator's Signature

10/6/03  
Date

# Bismarck

City Administration

February 28, 2003

Dear Chairmen Tollefson and Kretschmar and members of the Joint Constitutional Revision Committee:

I appeared in your committee on February 27, 2003 in opposition to House Concurrent Resolution 3071. During my testimony I may have misspoken on one item and I wish to disclose that item at this time. This misspeak does not change my or the city's opposition to the resolution. I do need to set the record straight in case it does change the issue for any of the committee members.

In my testimony (attached) I did state that the city had "taken stock in a community development organization that owns the asset." After the hearing questions arose that prompted me to verify this information. I found that the city does not own any stock but that it has a security interest in stock issued to a local economic development association in connection with two economic development projects.

In both cases the city awarded funds to the Bismarck Mandan Development Association (BMDA), our local economic development organization, for use in development of the projects for the new enterprises. In both cases BMDA purchased land and/or built buildings for the enterprise by investing these funds in construction projects. Bismarck Industries, a local development corporation, completed the buildings and leased them to the new businesses. In both cases Bismarck Industries issued stock to the BMDA to cover the value of its contribution and the BMDA, in turn, issued the city a "first priority security interest" in the stock. This security interest binds BMDA to not take any action that would "affect the city's first priority security interest in the secured property." The purpose of the security interest was to safeguard the city's investment in the project, as I testified.

I apologize for any misunderstanding or inconvenience that this misspeak may have caused. When I addressed the committee I believed the city did own the stock instead of a security interest. Since I have found otherwise I feel compelled to disclose this information to the committee. I would be happy to appear before the committee and offer this apology in person and to answer any questions on

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La Costa Richard  
Operator's Signature

10/6/03  
Date

request of the committee. I am enclosing my business card to expedite any needed communication.

Sincerely,

*W. C. Wocken*  
W. C. Wocken  
City Administrator

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*Salvatore Riccardi*  
Operator's Signature

*10/16/03*  
Date

HOUSE CONCURRENT RESOLUTION 3071  
Constitutional Revision Committee  
February 27, 2003  
Testimony of Bill Wocken In opposition

Good afternoon, Mr. Chairman and Committee Members:

My name is Bill Wocken. I am City Administrator for the City of Bismarck and I am testifying this afternoon in opposition to House Concurrent Resolution 3071 on the city's behalf.

House Concurrent Resolution 3071 proposes to accomplish two things: First, in Line 20 it inserts the word "organization" to replace "association or corporation". This will include economic development organizations. The City of Bismarck has contributed toward a building for a new company and taken stock in a community economic development organization that owns the asset. Thus, the city ensured that the organization cannot sell the asset without repaying the city's investment.

This proposal also makes it a crime to vote for whatever is not allowed by Section 18 of Article X of the state constitution. On several occasions, the State Supreme Court and the Attorney General have ruled that this section of the constitution allows any activity not forbidden by Article XX and authorized by the legislature. It seems at best unwise and at worst draconian to apply a criminal penalty to conduct that is defined as something not prohibited by another section of the constitution. In addition, the legislature has already enacted NDCC § 12.1-23-07 which criminalized this same conduct. The final sentence making the whole section self-executing lends even more question to what consequences the ambiguity of this proposal will invite.

The City of Bismarck opposes this bill and asks for a Do Not Pass recommendation.