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Date

2003 JOINT CONSTITUTIONAL REVISION

SCR 4013

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4013

~~Senate~~ Joint Constitutional Revision Committee

☐ Conference Committee

Hearing Date 02-27-03

Tape Number	Side A	Side B	Meter #
1	X		0-1260
1	X		3645-3755
Committee Clerk Signature <i>Deanna Tollefson</i>			

Minutes:

SENATOR TOLLEFSON called the committee to order. Roll call was taken with all (5)

Representatives and all (5) Senators present.

SENATOR KREBSBACH said that she would turn the floor over to people that could speak of the bill.

AL JAEGER Secretary of State.(Testimony Attached) The Secretary of State also passed out written testimony of William Guy III in support of this bill. (Testimony Attached)

REPRESENTATIVE MARAGOS How many other States have this besides North Dakota.

AL JAEGER To my knowledge, we are that only state that has this. It goes back to statehood days, and probably never will be changed. Everyone wants to be incorporated in the State of Delaware. If you walked into my office with a set of papers in order, we could possibly take care of it while you are waiting. In Delaware if you want that service it costs you \$500.

SENATOR KREBSBACH Have we lost filings in North Dakota by having this restriction.

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Page 2

~~Senate~~ Joint Constitutional Revision Committee

Bill/Resolution Number SCR 4013

Hearing Date 02-27-03

AL JAEGER I am going to defer that to former Governor Ed Schafer.

ED SCHAFER Former Governor of North Dakota and President of Extend America. I am here in favor of SCR 4013. I approached the Secretary of State in the fall of 2001 about problems with the new company that I was involved with starting in the state of North Dakota. We were advised not to incorporate in North Dakota by attorneys that we had hired. They recommended that we incorporate in Delaware. Over the objections of the attorneys, we insisted that this corporation be filed in North Dakota. We filed under 2 conditions: (1) We would talk to prominent officials and people seek legislation to put this constitutional issue on the ballot. (2) If this does not change, Extend America would cancel our registration here and reincorporate in another state. Other companies have faced this issue in North Dakota and have incorporated in other states.. There are several prominent businesses that are not incorporated in North Dakota. Time to put this to a vote of the people, and I would appreciate your positive consideration.

REPRESENTATIVE KRETSCHMAR If this resolution were put on the ballot, would you have a preference of in the general election or the June election.

ED SCHAFER I don't think it is an issue. You are in a better position knowing how legislative processes work. As the Secretary of State mentioned, I think it is going to difficult to explain.

There was no opposition to this bill.

Hearing on SCR 4013 closed.

Tape #1 Side A Meter # 3645 -3755

Representative Hawken moved a DO PASS. Seconded by Senator Krebsbach.

Roll Call Vote: 9 YES. 0 NO. 1 Absent.

Carrier: (Senate) Senator Krebsbach. (House) Representative Hawken.

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Date: 2/27/03
Roll Call Vote #: 1

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

Joint Constitutional Revision Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number **SCR 4013**

Action Taken Do Pass

Motion Made By Rep. Hawken Seconded By Sen. Krebsbach

[illegible]

Total (Yes) 9 No 0

Absent /

Floor Assignment Sen. Keobach (Senate) Rep. Huxen (House)

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

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REPORT OF STANDING COMMITTEE (410)
February 28, 2003 8:59 a.m.

Module No: SR-36-3638
Carrier: Krebsbach
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SCR 4013: Joint Constitutional Revision Committee (Sen. Tollefson, Chairman)
recommends **DO PASS** (9 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
SCR 4013 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-36-3638

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REPORT OF STANDING COMMITTEE (410)
March 5, 2003 4:47 p.m.

Module No: HR-39-4043
Carrier: Hawken
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SCR 4013: Joint Constitutional Revision Committee (Rep. Kretschmar, Chairman)
recommends **DO PASS** (9 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
SCR 4013 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-39-4043

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2003 TESTIMONY

SCR 4013

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ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0600

February 27, 2003

TO: Senator Tollefson and Representative Kretschmar
and Members of the Joint Constitutional Revision Committee

FR: Al Jaeger, Secretary of State

RE: SCR 4013 - Resolution to Amend Article XII of the North Dakota Constitution

If the voters of the State of North Dakota approved this resolution, it would do the following:

1. It would provide the same flexibility to business corporations in the election of their directors that is now only available to cooperative associations. In other words, a business corporation would have the same cumulative voting rights for directors unless they chose to do otherwise in their governance structure.
2. It would provide the same flexibility to a North Dakota chartered business corporation for issuing shares of stock and structuring their Board of Directors as is available to business corporations in other states.
3. It would provide, by the removal of a restriction, an incentive for publicly traded corporations to become chartered in North Dakota rather than in another state.
4. It would allow a North Dakota chartered corporation to still maintain, if they so choose, preemptive rights for new stock by including those limitations in their Articles of Incorporation. The amendment would not negate the chosen governance structure of any existing corporation or that of any new corporation that may choose to place restrictions on the creation of new shares. In other words, it provides corporations with options.

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TESTIMONY OF WILLIAM L. GUY III, CHAIRMAN
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
SENATE CONCURRENT RESOLUTION NO. 4013

My name is William L. Guy, III. I live in Fargo and am an attorney in active practice in North Dakota. A substantial portion of my law practice involves the representation of business entities . . . some of which are corporations. My testimony today is in support of Senate Concurrent Resolution No. 4013 (SCR No. 4013). As you know if enacted by the legislature SCR No. 4013 will be the first step in the process of amending sections 6 and 9 of article XII of the Constitution of North Dakota.

The effect of amending section 6 of article XII of the Constitution will be to clarify the provisions pertaining to cumulative voting by shareholders in the election of directors. As amended a shareholder of the corporation may distribute the shareholder's votes for members of the board among the various candidates, subject to any limitation in the by-laws on the voting power of its shareholders.

The effect of amending section 9 of article XII of the Constitution will be to eliminate the *constitutional requirement* that existing shareholders in a corporation be deemed to hold a preemptive right to maintain their pro-rata share of the corporation's capitalization in any new stock offering. Thus under section 9 as now written, if a shareholder owns twenty (20%) percent of the shares of a corporation, that shareholder has the right to buy twenty (20%) percent of all subsequently issued shares in the corporation. If desired by a particular corporation, such a provision could be included in its articles of incorporation. However, requiring every corporation to include this requirement causes North Dakota to

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be an undesirable state in which to incorporate a business whose shareholders are likely to be unrelated and unknown to one another. Whether such a corporation is publically traded (or privately traded among a relatively large number of shareholders), mandating the *preemptive right* of the existing shareholders to maintain their current percentage of the capital of the corporation will have a chilling effect on stock offerings.

In each case, the provisions which would no longer be constitutionally required could be included in the articles of incorporation of any corporation, according to the needs and wishes of each particular group of shareholders.

If any of you have any questions, I would be happy to respond by speaker telephone at today's hearing or to attend a continuation of today's proceedings at a later date.

Thank you.

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