

2009 HOUSE CONSTITUTIONAL REVISION

HCR 3019

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 02/11/09

Recorder Job Number: 9248

Committee Clerk Signature

Lori Engleson

Minutes:

Chairman Koppelman opened the hearing on HCR 3019.

Rep. Sukut offered testimony in support of HCR 3019. See attachment #1.

Chairman Koppelman: Questions?

Rep. Schneider: Where in the language is it saying you can't do it now?

Rep. Sukut: You tell me. I can't figure it out. Apparently this has been an issue that's been brought forward by several in the past, but it's in here. It has to do with the donations, and somehow that's been interpreted by some to be a gift. It's a grey area..

Chairman Koppelman: Rep. Schneider, I think it's that sentence just before the new language where it talks about making donations to or in aid of an individual, association, or corporation. They apparently interpret a tax refund or rebate directly to people as a donation under that language. I don't know if there's court cases that have ruled that.

Rep. Conrad: Did you look at the history on why this was there in the first place? In the original constitution?

Rep. Sukut: No, I didn't. I suspect that I don't think this was the intent of what is in there.

Why it's there and what it is supposed to do, I can't answer that question.

Rep. Conrad: Something sticks in my mind about railroads, that this was written so you couldn't give land or something to a corporation, the railroad being the most outstanding.

Chairman Koppelman: Any other questions? Other questions in support of HCR 3019.

Rep. Berg: My name is Rick Berg from District 45. This bill has not been changed since 1919. The original date was 1889. Senator Conrad's point is probably true. The railroads were giving 25% of the state of North Dakota to come in originally and lay down the rail. For those of you who were here for the last session, I was up in the tax department with about ten people from the tax department trying to figure out how we could somehow provide property tax relief to the people of North Dakota. My understanding is we can provide income tax relief, we can provide sales tax relief, any of the taxes that we collect. But we don't collect property tax so that is the challenge that we faced last year. Because of the language in the constitution, we could not give a refund on taxes that we don't collect. So having said that, I think this language is very specific. It relates to a time when we have surplus and wish to give money back to the people. This would allow the legislature maximum flexibility to figure out what the fairest way to do that would be. If the legislature at some point in the future decides to do this, the question of whether or not they can, should not cloud the issue of what should they do, and what is the right way to do it.

Chairman Koppelman: Any questions for Rep. Berg? With regard to what we crafted last session because of this, as I recall it was property tax relief. Again, as you explained for a tax we didn't collect so we were trying to help people who were paying high taxes to others other than the state, other levels of government. In doing that, we had to do, as I recall, through an income tax process which got very convoluted and confusing and arguably maybe didn't help the people that actually paid the high tax back then because it was prospective not retrospective. If this were to pass this in your view, would it be something that the legislature

could say, we want to either do what we did last time or do what we're talking about doing this time or simply issue a check or lower a tax rate.

Rep. Berg: To some degree I still question the constitutionality of what we did last session because we indirectly gave something that could be perceived as a gift. If this were in place, I would see it being much more streamlined. If we said we wanted to give 10% of the property tax back, it would be pretty streamlined. We'd probably work with the local auditor or treasurer, and those check could be automatically cut from there or from the state rather than having to go through the tax department. The property tax department did a tremendous job facilitating that.

Rep. Hatlestad: If, as you said, we can refund only taxes we collect. Correct? We collected excess revenue. Why can then we not give that excess revenue back. We collected through taxes. Why can't we just give it back.

Rep. Berg: What if you gave it to someone who didn't pay property tax. Would it be a gift for them. You're arguing about why we can't do it?

Rep. Hatlestad: If we take the label property tax off and just say it is a tax refund, excess state revenue, why couldn't we write a check and send it back?

Rep. Berg: Clearly I think you could do that. Now if the legislature is saying we want to deal with a specific issue of property tax, again those people that are paying more in property tax would want to specifically do it that way, then I don't think it works. But I think it could be challenged if in fact it went to people who weren't paying a sales tax or an income tax. I think then the sentence before this, it would be a gift or charity to them.

Chairman Koppelman: Again, to clarify, even now if we take property tax out of the mix completely. Let's say we decided we've got money in the bank as a state, and we're going to give people an income tax rebate. Right now we can cut the tax rates and say going to be x

percent instead of what it was before. Under this current interpretation of the constitution, I'm not sure if we could even cut a check for that. Could we?

Rep. Berg: Obviously we have a bill that can simply that. Because we collect income tax and we're going to again give \$100,000,000 back which is one-third of the tax we paid, it's a fair way to give it back. It's a refund from the tax we collect too much of.

Rep. Uglem: Do you have no fear that this opens it up for making payments back to citizens who are not paying taxes?

Chairman Koppelman: Other testimony in support of HCR 3019. Seeing none, testimony is opposition to HCR 3019.

Curly Haugland: My name is Curly Haugland in opposition of this bill. I see what the intent is but clearly the intention of this resolution is to have a refund of excess taxes, but to redistribute the taxes. I would clearly be in opposition to that. As many of you know, I have been opposed to the legislation and appropriation of public money to private individuals. I want to call your attention to the paragraph right above the suggested addition. The state can make internal improvements and so on and so forth. But then it gets to the language neither the state or any political subdivision thereof may otherwise loan or give its credit or make donations to or in aid of any individual, association, or corporation except for welfare or to become the owner of capital stock in any association or corporation. I submit to you that there are bills in this session right now allowing every single one of those. There are bills that make donations to college students to give them free tuition. Legislators specifically want to have those things. Again, the value of the constitution is pretty important. There are only two things you have to do to serve in the legislature. One, you've got to beat your opponent and the other is to raise your hand and take an oath. Obviously somebody in the legislative council has apparently determined it is still improper to give money to people whether they were the original donor to

the state. In the 51st legislative session, in the same committee, Senator Dean Meyer introduced the same resolution on my behalf but it was a little bit different. (See attachment #2) The reason for the resolution was because of my frustration 20 years with all the giving away that was going on. It was apparently in violation of the constitution. So Senator Meyer had this introduced on my behalf and what it does is simply deletes the language "but neither the state..." and so on and so forth. It simply deletes all that language. So what I was asking at that time was to have the legislature put this on the ballot so that voters can examine what their constitution says and simply take all this language out. If I could, I'd like to offer an amendment. Disregard the added language in this bill and simply go back up and take that out. I would support an amendment that would simply remove the language. Even as distasteful as it is to me at least I would have the opportunity to campaign to the public in the state of North Dakota and explain why I didn't support a bill to give money to other private individuals. I encourage you to amend it. I'm in opposition unless it's amended, then I'd support it.

Rep. Koppelman: Even though you'd be in opposition to that idea, correct? You'd support the amendment but you'd be in opposition to what the amendment would do.

Curly Haugland: The resolution would simply be to put the matter on the ballot. I support that.

Rep. Koppelman: That's what this is too.

Curly Haugland: But I don't support having this on.

Rep. Hatlestad: If you take out line 19 which says "except for reasonable support of the poor" would that mean we'd do away with our welfare system?

Curly Haugland: No we'd leave that term in.

Rep. Hatlestad: Leave that term in?

Curly Haugland: Yes. Actually you could take it out and it wouldn't matter.

Rep. Hatlestad: Does that not do away with the welfare system?

Curly Haugland: Actually no. It's silent. Gifts would be acceptable to the truly needy.

Rep. Conrad: So what you're saying is if this were to be put on the ballot, this resolution, that if we take the oil tax dollars and we give them to the people of North Dakota, we're giving them something. We're not returning something. We're giving them a gift.

Curly Haugland: That's right. That would not be a refund. It would be a redistribution. I just don't think redistribution is appropriate. Refund, whether it be a new tax, sales tax, those can all be refunded.

Rep. Conrad: If we were to say we're going to fund the state of North Dakota out of our services and all the oil taxes, we return people's income tax or their sales tax to them, that would be okay, wouldn't it? We could return it we then live off the oil income.

Curly Haugland: That's exactly right. No matter what we spend money for as a legislature, it's state-owned money. It's funds of the people of the state of North Dakota. The funds become funds of the state of North Dakota once they get into the general fund.

Chairman Koppelman: It seems to me that your objection is the potential redistribution of these dollars. You don't have an objection to refunding or returning dollars. As I read the language in the resolution, it talks about return of funds from excess funds, but it says to citizens which is what I think you get this concept that it can be returned to anybody, and I can understand that interpretation of this. But it does say return which to me implies it is something that has already been received from that individual. If the language were changed to say "taxpayers" or something to that effect to give the clarity that if we return money, if we say that everybody in North Dakota who paid income tax last year, is going to get a \$50 check from the state. Do you have an objection to that.

Curly Haugland: You don't need to change to constitution to refund excess funds to specific taxpayers. If you want to refund 40% of income tax, I can take out my tax bill and multiply it by .40.

Chairman Koppelman: But you probably couldn't do it with sales tax.

Curly Haugland: If you have too much money in the pot, and you want to give it back to somebody, you should give it back to everybody who paid in but it's hard to do. I heard earlier testimony that I think the intent of some of the sponsors of this bill want to actually redistribute money.

Chairman Koppelman: Any other testimony in opposition to HCR 3019. Any neutral testimony to HCR 3019. Seeing none we'll close the hearing on HCR 3019.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 03/02/09

Recorder Job Number: 9988

Committee Clerk Signature

Lou Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3019.

Chairman Koppelman: Rep. Hatlestad, would you like to explain your amendment.

Rep. Hatlestad: They are talking about giving money back to the taxpayer or giving money back to the citizens which initially the statement was made and there was testimony criticizing that you could not give money back to a citizen unless they had paid the tax, and therefore we should change the word "citizen" to "taxpayer" in order to enable us to refund money to a taxpayer. So it's not a redistribution of wealth.

Rep. Griffin: What would happen under the past property tax plan that we passed. If an individual owned a home but was retired so they're paying property but hadn't received income tax. No I guess I answered my own question.

Rep. Hatlestad: But they gave a voucher to that individual to claim against his property tax.

Rep. Conrad: If you are going to give out property tax money, then we aren't required for renters or people with mobile homes, we wouldn't give them money.

Rep. Hatlestad: No. And we can't do that now. My understanding was when Curly Haugland said that it is unconstitutional to give a refund if you have not paid that tax, that we

cannot give you a refund. So what this is saying is you have to be a taxpayer in order to get the refund check.

Chairman Koppelman: Two points we need to look at. One is that if you remember the testimony Rep. Berg talked about the difficulty in the last session when the legislature made a decision to try to do something about high property taxes. The interesting dilemma is the choice that the state does not collect property taxes. So in essence, we're refunding something we don't collect. So how do we do that. With this constitutional section, it was interpreted by the legislative council that you couldn't do that. You couldn't give money back to the taxpayer that we hadn't first received from the taxpayer. So what occurred was the strange (inaudible) that we gave it back the way we did through income tax because that is a tax that the state collects. So I think that's what precipitated the resolution. The question and the critique of the resolution and opposition testimony was that this could become a vehicle for redistribution because the idea of being a citizen, then we can say we can rob from Peter to pay Paul. That kind of a concept. However if you look at the language preceding this in the constitution, I think you will see that we do have language in there already about making donations and so on except for reasonable support of the poor. We already have that sort of a provision in there.

Rep. Griffin: I'm using Alaska as an example. If oil money like up in Alaska, you get a check back. If we did start bringing in a tremendous amount of oil revenue and we wanted to give a check back, this may prevent that. I think that "citizen" the way it is written now gives the legislature the authority to do as we see fit.

Chairman Koppelman: On the federal level, one of the things I've heard debated, which is kind of interesting discussion is when people talk about some tax rebates or refunds. Some object saying well, it's principle. You're giving a tax refund to someone who didn't pay taxes.

And the answer is well, everybody is a taxpayer. They are paying sales tax or they're paying payroll taxes. So I assume if you're a brilliant lawyer you could probably argue even if that measure did say "taxpayer" you could make the argument that everybody is a taxpayer even if it's not the specific tax you are refunding which wouldn't be the case with property tax either because you didn't pay that into the state.

Rep. Conrad: You probably could get around it by saying sales tax or something. What we benefit by using "taxpayer" instead of "citizen"?

Rep. Hatlestad: My understanding is that if Curly is right, he's saying you cannot refund tax collected money to an individual unless he had paid the tax.

Rep. Conrad: But that's the way it is now. We are opening it up so that we can. That's the change.

Rep. Hatlestad: I could get a check from the state not having paid any income tax whatsoever. You are going to give me a refund check of let's say \$2000 just because I'm a citizen of the state of North Dakota. I'm saying you can't do or Curly is saying you can't do that unless you paid income tax, you can't get an income tax refund.

Rep. Schatz: Just along those lines, I'm thinking somebody might jump the line just to get the money. They could say, well I'm living in North Dakota now. I was living in Moorhead now, but now I'll live here. If you put taxpayer down, it would clarify that as to somebody who has actually paid in.

Rep. Meier: I would like to move the amendment.

Rep. Schatz: Second.

Chairman Koppelman: The amendment has been moved and seconded. Further discussion?

Rep. Uglem: I really don't see where the amendment is going to change anything. They are all taxpayers.

Chairman Koppelman: I think it would depend on how you interpret it. But clearly as Rep. Schatz indicated, it could be a broader loophole or question with regard to the terms. We'll try a voice vote on the amendment to HCR 3019. All those in favor signify by saying aye. Opposed? The ayes have it.

Rep. Schatz: I'll move a do pass on HCR 3019.

Rep. Hatlestad: Second.

Chairman Koppelman: Further discussion.

Rep. Hatlestad: Basically what the purpose of the resolution is is to give the state the authority to give money back where it couldn't before.

Chairman Koppelman: We did not discuss the date, did we. Preferences. I think we've got some potentially big ideas in some of the other amendments. My personal thought is maybe some of those ought to be on the general election ballot if we do move them out. Would this be one for the primary do you think? I guess to handle this more correctly we need to ask if you are willing for the mover and seconder of the do pass motion to withdraw or you can amend your motion to move this to the primary ballot.

Rep. Schatz: I'll amend my motion to move this to the primary ballot.

Rep. Hattlestad: Second.

The clerk read the roll on a do pass as twice amended.

8 yes, 0 no, 1 absent and not voting. Rep. Schatz was assigned to carry the bill.

March 2, 2009

VR
3/2/09

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3019

Page 1, line 11, replace "general" with "primary"

Page 1, line 21, replace "citizens" with "taxpayers"

Page 1, line 22, replace "citizens" with "taxpayers"

Renumber accordingly

Date: 03/08/09

Roll Call Vote #: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3019

**HOUSE CONSTITUTIONAL
REVISIONS COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By meier Seconded By Schatz

[illegible]

Total Yes _____ No _____

Absent _____

Floor Carrier: _____

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

Amendment passed voice vote

Date: 03/08
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3014

**HOUSE CONSTITUTIONAL
REVISIONS COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Schatz Seconded By Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Conrad	✓	
Vice Chairman Kretschmar			Rep. Griffin	✓	
Rep. Hatlestad	✓		Rep. Schneider	✓	
Rep. Meier	✓				
Rep. Schatz	✓				
Rep. Uglem	✓				

Total Yes 8 No 0

Absent 1

Floor Carrier: Schatz

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

Amend to primary ballot

Library

REPORT OF STANDING COMMITTEE

HCR 3019: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (8 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3019 was placed
on the Sixth order on the calendar.

Page 1, line 11, replace "general" with "primary"

Page 1, line 21, replace "citizens" with "taxpayers"

Page 1, line 22, replace "citizens" with "taxpayers"

Renumber accordingly

2009 SENATE FINANCE AND TAXATION

HCR 3019

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

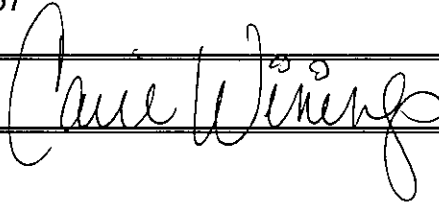
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 03/24/2009

Recorder Job Number: 11457

Committee Clerk Signature



Minutes:

Chairman Cook: Opened the hearing on HCR 3019.

Representative Gary Sukut, District 1: See Attachment #1 for testimony as sponsor and in support of.

4.02 Chairman Cook: What election are you thinking of?

Representative Sukut: The primary election in June.

Vice Chairman Miller: Does this resolution make it so that the government can give someone a gift?

Representative Sukut: It is really not going to affect the way the gift tax has been interpreted in the past. All it is going to do is, it will, if we have a surplus, give us the ability to simply write a check back instead of credits.

Chairman Cook: What was changed in the House?

Representative Sukut: One other change was made; "citizens" was changed to "taxpayers" as well as the date.

Senator Dotzenrod: Is there any history on this as to why this was put into the constitution?

Representative Sukut: I don't know a lot about it. Some of this is from prohibition times. That part of the text has probably outlived itself.

Chairman Cook: My guess is that was probably put in at the beginning of statehood.

Chairman Cook: When you were drafting this bill did you have any conversations with the Attorney General?

Representative Sukut: No.

Senator Dotzenrod: If this became part of the constitution, would it be your understanding that the legislature would be free to decide who would get the checks and who wouldn't. There might be certain classes that we want to refund and some we may not, we would be free to make that decision?

Representative Sukut: That is correct.

9.24 **Chairman Cook:** Further testimony? (no) Closed the hearing.

Senator Triplett: Can we discuss this? I would like for you to tell me what it means?

Chairman Cook: I think that is what it means. I had a conversation with the Attorney General as far as whether or not this was a correct avenue to go down. How did we ever have a justification for the constitutional restriction in the first place and probably for that very reason? We do it with tax policy all the time. I had that concern, it is a legitimate concern. (Example of past session and Cass County) The changes we made last session complicated things a bit. I can support it.

Senator Hogue: I think this needs some work. As long as it is tied to refunding taxpayers money it wouldn't fall under this section. I don't know how you would make that argument. I think this whole bill needs some work. There are so many problems with Section 18. (Sites several parts of the code that are already not followed) This section has a lot of different problems.

Chairman Cook: Are you suggesting that it would be a good idea to allow the state of North Dakota to own stock in (inaudible) corporation?

Senator Hogue: In limited circumstances I would be ok with it. The transmissions authority and the pipeline authority are perfect examples. We have given both of those entities the authority to issue debt of up to \$800 million and so the state would be initially taking all the risk for either a pipeline or a transmission line and then they are instructed to turn around and sell it to a private entity. I think it might be wise for a state to say they would be willing to sell it for a certain amount but they want an equity position in it as well. That might be part of the terms of the sale. To me this provision would prohibit that. That is only one problem.

Chairman Cook: We have an equity position as a state in many for profit corporations, I believe it is unconstitutional. I am surprised that someone has not challenged it.

Senator Triplett: I think most of the cities and counties have gotten around it by setting up job development authorities which are sort of not like the city or county. Maybe we should get someone from the Attorney General's office to advise us on this.

Chairman Cook: That is what I was thinking.

Senator Triplett: I do have a problem with the answer to Senator Dotzenrod's question. I think that if we are going to be putting language in here, I would want to be clear that any money back to the taxpayers would be proportionate to what they paid in. I know that adds a level of difficulty to it. Life happens and people pay taxes and if you try to give a refund back a year or two later you are going to find all kinds of circumstances where things have changed. I understand that it can't ever be perfect, but to the extent that you could intentionally make it less than fair that bothers me.

Senator Hogue: I don't think that there could be any broader discretion.

Senator Triplett: That is my point. I would like it less broad.

Senator Hogue: Is anyone aware there is any case that this was implicated to say that that refund you gave this taxpayer over here was a gift under this section?

Senator Triplett: It may just have been the Attorney General's office being really conservative when they suggested to us last time around.

Chairman Cook: I think it was legislative council's advice.

Chairman Cook: Closed the discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

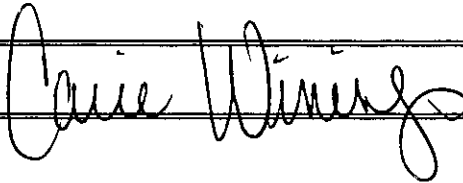
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 04/01/2009

Recorder Job Number: 11594

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on HCR 3019.

Senator Hogue: I did speak to someone in the Attorney General's office and we did walk through all of the various contradictions in Section 18. We seemed to do all of those things.

He did provide me with a legislative council opinion that suggested that it may not be constitutional to give back money to taxpayers with a check if it wasn't directly tied into how much they paid. The Attorney General has never opined on the issue and the case that the legislative council relied on this is a 65 year old case involving property taxes. We talked about the fact that most of section 18 is basically ignored by the state and political subdivisions and we don't follow it. The one we spent the most time talking about is the state taking an equity position in any association or corporation while our economic development folks are doing that. And they are not doing it on every case, but on a regular basis. They are taking an equity position in startup corporations. Of course the state has equity positions in cooperatives. That is not an intentional taking of equity, but the economic folks are. I question if we should be repealing the entire section as being something that is mischievous and we don't need to have it around to disrupt a lot of what we are doing today. I don't know how you would sell that to the voters. It doesn't seem to be something that is taken seriously by the

state. The first clause is meaningless because you notice that you can do any of those things not prohibited by article 20 of the constitution. That has been repealed itself.

4.20 Senator Triplett: The one piece that I would want to preserve is that part that prohibits simply making donations in aid of any individual association or corporation. I think that at the very least the way we always looked at this section of the constitution, if we were looking to give money to a nonprofit association we always developed a service agreement with them. (Gives examples from experience) I would be opposed to getting rid of the whole section. I would not be opposed to rewriting it.

6.38 Senator Dotzenrod: Line 18 says that you cannot make donations, but it doesn't say that you can't enter into contract. Which is what is happening in a lot of these circumstances where contracting and there is a signed agreement that is executed and these agreements call for performance and obligations and payments and things that are made. I am going to guess that the way we are currently operating in the department of commerce is that they are executing an agreement of some kind and then they take these positions because it calls for performance and it calls for certain things that go both ways. I assume that is how they are making it work.

Chairman Cook: What is the problem?

Senator Triplett: I think the problem seems to be that it is being ignored by the economic development area. The sponsors see a problem in the sense that they would like to be able to give tax dollars back more directly than we figured out before. I think this might be a good thing for a legislative study. It needs too much work on the language to be credible.

Chairman Cook: I ask that because if there is a problem that has been identified out there that this was introduced to solve the problem that we had last session when we were told that we could not draft a bill to do something that we wanted to do. That was simply to send some

checks back to people based on their property tax. Maybe we should have ignored legislative council and done it anyway just as the counties did. Maybe we don't even have a problem. I would be happy to turn it into a study.

Senator Hogue: I think that is a good idea. My concern on the equity provision is that in the next five years the state may get involved in issuing bonds to build either a pipeline or an electrical transmission line and I think both of those statutes require us to turn around and sell that as soon as we build it, if we do. I can see that it would be advantageous to the state to try and keep some equity position.

Chairman Cook: There is only one way I would want the state to do that. That is if there wasn't a way to accomplish a pipeline with 100% private money and it was absolutely needed.

10.19 **Senator Triplett:** As the credit crunch stays out there for the next couple of years it may be that these companies would need some participation from the state. It is hard to say.

Chairman Cook: Do you want to get that done.

Senator Triplett: I will.

Chairman Cook: Closed the discussion.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3019

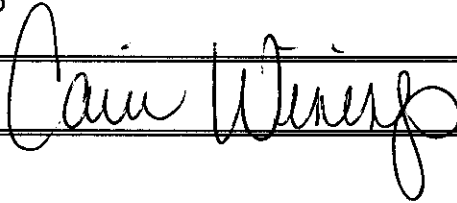
Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 04/01/2009

Recorder Job Number: 11605

Committee Clerk Signature



Minutes:

Chairman Cook: Reopened discussion on HCR 3019.

Senator Triplett: See attachment #1 for amendments proposed.

Senator Triplett: Moved amendments 93022.0201.

Senator Oehlke: Seconded.

Chairman Cook: Discussion?

Senator Dotzenrod: Clarifies the purpose of the resolution once more.

A voice vote was taken: Yea 7, Nay 0, Absent 0.

Motion passed.

Chairman Cook: Discussion?

Senator Triplett: Moved a Do Pass As Amended.

Vice Chairman Miller: Seconded.

Chairman Cook: Discussion?

A Roll Call vote was taken: Yea 7, Nay 0, Absent 0.

Senator Triplett will carry the bill.

April 1, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE CONCURRENT
RESOLUTION NO. 3019

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with
"directing the Legislative Council to study Section 18 of Article X of the Constitution of
North Dakota.

WHEREAS, Section 18 of Article X of the Constitution of North Dakota has
existed unchanged for more than eighty years; and

WHEREAS, this constitutional provision has profound effects on state and
political subdivision interaction with businesses and citizens and it is incumbent upon
the Legislative Assembly to determine whether the constitutional provision adequately
governs the current status of state and local government needs and limitations with
respect to businesses and the citizens of the state;

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

That the Legislative Council study Section 18 of Article X of the Constitution of
North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings
and recommendations, together with any legislation required to implement the
recommendations, to the Sixty-second Legislative Assembly."

Renumber accordingly

Date:

04 | 01 | 09
 II Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. :

3019

Senate

Committee

Amendment

Legislative Council Amendment Number

93022020

Action Taken

☐ Do Pass

☐ Do Not Pass

☐ Amended**Motion Made By**

Senator Triplett

Seconded By

Senator Dehlke

[illegible]

Total:

Yes

No

Absent

Floor Assignment

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

Date: 04/01/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 3019

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ^{AS}

Motion Made By Senator Triplett Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller - Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Triplett

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

REPORT OF STANDING COMMITTEE

HCR 3019, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3019 was placed on the Sixth order on the calendar.

Page 1, line 1, after "resolution" replace the remainder of the resolution with "directing the Legislative Council to study Section 18 of Article X of the Constitution of North Dakota.

WHEREAS, Section 18 of Article X of the Constitution of North Dakota has existed unchanged for more than eighty years; and

WHEREAS, this constitutional provision has profound effects on state and political subdivision interaction with businesses and citizens and it is incumbent upon the Legislative Assembly to determine whether the constitutional provision adequately governs the current status of state and local government needs and limitations with respect to businesses and the citizens of the state;

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

That the Legislative Council study Section 18 of Article X of the Constitution of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly."

Renumber accordingly

2009 HOUSE CONSTITUTIONAL REVISION

CONFERENCE COMMITTEE

HCR 3019

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

House Constitutional Revision Committee

☒ Check here for Conference Committee

Hearing Date: 04/17/09

Recorder Job Number: 11947

Committee Clerk Signature

Low Engleson

Minutes:

Chairman Hatlestad opened the hearing on HCR 3019.

Chairman Hatlestad: The issue facing us today is the Senate changes or amendments to HCR 3019.

Sen. Hogue: We looked at this section of the Constitution and the House's amendment. If you look at this section, the first sentence of Section 18: The state, any county, or city may make internal improvements...not prohibited by Article XX of the Constitution. That entire sentence is meaningless because Article XX has been repealed. You go down a little further into the section, and it says that the political subdivisions nor the state may otherwise loan or give credit to any association or corporation or become owners of capital in an association or corporation. Well we're doing that right now. Our Commerce Commission is taking equity positions. Virtually every coop in the state of North Dakota, political subdivisions are taking equity positions in those organizations. We felt that this section has a lot of problems. It didn't make sense for us to try to correct one part of it without looking at the entire section. We have a transmission authority, and we have created a pipeline authority. They both have the ability to raise money and incur debt to construct the pipeline authority in North Dakota or transmission authority. They are also directed to sell it off. One of the things we thought it

might be useful for the state to be able to take an equity position in a pipeline authority or a transmission authority. It may well decide that it doesn't want to. That was another reason to look at this entire provision of our Constitution and not just try to amend it to add this one sentence for the purpose to distribute checks to citizens if we decided to do that.

Rep. Schatz: Are we going to have a study with this resolution directing them to study it? What would be the purpose of the study? The purpose of the resolution is to be able to give money back to people. The study would then redraw Section 18?

Sen. Hogue: The study would hopefully come up with a proposal to redraft Section 18 to make clear that if it is okay to do some of the things that the Commerce Department is doing today and the political subdivisions are doing today. I don't know all the things these economic organizations are doing out there. That would be one good area to study. The second area is to clean up the first clause which is rendered meaningless by the fact that Article XX has been repealed. I did have discussions with the Deputy Attorney General on whether this language, which is the House concurrent resolution, whether it is even necessary. The added language was proposed on the hunch that it's unconstitutional to distribute a check and would constitute a gift. I'm not even sold that that is the case. The legislative council, if you've seen their opinions, it says it could be unconstitutional. They discouraged the last legislative assembly from giving some stimulus money through a direct check because they thought it could violate this provision. What the legislative council relied on is a case that is about 65 years old and dealt with property taxes. I'm not even sure this provision is necessary.

Sen. Triplett: I don't think this necessarily hosts a conflict.

Rep. Schatz: You said transmission companies. Are they in violation of the law currently?

You said they are already doing it. They are already having equity in these things. When the law says that they are not supposed to, are they violating the law?

Sen. Hogue: Based on what it says here, they probably are.

Chairman Hatlestad: When we visited the legislative council, our objective was simply to make sure that if the people passed the concurrent resolution, that the legislature could then devise a way to return money, excess revenues, to the taxpayers. It was changed from citizen to taxpayer because according to an individual, you can't return excess revenue to an individual unless they have paid that tax. So we changed it to taxpayer. It was stimulated by the property tax fiasco that we struggled with last year. We wanted some way to return money. The only purpose was to give the legislature an opportunity to determine a way to return the money to the people. I'm surprised that with all the objections that you have, that legislative council didn't bring any of that information up when the bill was written. Unless you have anything, we'll have to reschedule another meeting to give us time to go back and talk to our people and see what kind of reaction we get.

Sen. Hogue: Legislative council would be a good place to start. The other place I would suggest is to talk to some of these economic development organizations.

Chairman Hatlestad: We have a note from Tom Trenbeath, and I guess he didn't see the need for this study resolution. (See Attachment #1)

Sen. Hogue: He is the individual I visited with. I don't know that we discussed whether or not to study it, but we did review all of the flaws with this section. He acknowledged those.

Chairman Hatlestad: We will adjourn the meeting, and we will reschedule it for another day.

Chairman Hatlestad closed the hearing on HCR 3019.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

House Constitutional Revision Committee

☒ Check here for Conference Committee

Hearing Date: 04/20/09

Recorder Job Number: 11965

Committee Clerk Signature *Lori Engelson*

Minutes:

Chairman Hatlestad opened the hearing on HCR 3019.

Chairman Hatlestad: I visited with John Walstad about the House version of the bill. He said we could allow the proposed amendment to stand and then include a study along with it. The study would not show up on the ballot, but there would be no reason why we couldn't allow the legislature to determine a way of returning money to the taxpayer. Then go back and study the other provisions of Section 18. He indicated that the first sentence, the one you expressed concern with since Article XX had been repealed from the Constitution is that it keeps the state out of the liquor business. The state political subdivision cannot be legally involved in the liquor business so they felt that that had to stay. The second sentence you brought up, the number of concerns you thought should be looked at, that there were some significant ramifications to that second section in there. You thought neither the first nor the second would really have any effect on the proposed addition that Rep. Sukut suggested, the return of revenue.

Sen. Triplett: I'm not sure I'm following what you're saying. You suggest that we put this new language on the ballot in the election and then study the rest of it. If the rest of it requires

changing, then it would have to go on the ballot again two years down the road. Am I following what you're saying?

Chairman Hatlestad: That's correct.

Sen. Triplett: It would seem more efficient to do it all at once. Just the perception of the public maybe.

Chairman Hatlestad: I believe what you say has some merit, but what he is suggesting is that perhaps we need a method of returning money to the people if that situation exists again and didn't feel that that would create a problem. He thought the ramifications were so significant that we could do both.

Sen. Hogue: I did think about what you've suggested. I don't know if it's the efficiency argument. I just don't feel that that is a very good form of legislature leadership to say there might be some problems with this constitution provision but we want you voters to approve part of it now, and we'll study the rest of it later. If there's problems then, we'll come back and ask you to approve another amendment. I have difficulty with going about our business that way.

Rep. Schatz: How much time will elapse if we don't do something soon. That would be four years away before we could ever have a vehicle to give money back to the people. I'd rather do it sooner than later.

Sen. Triplett: We finding ways of giving the money back. I don't have an issue with this particular notion so much. I think the way we propose something to the voters as a constitutional amendment has a certain gravity about it. People start talking about people are already doing that. It brings up a conversation that makes it look like we are doing things in a half way kind of manner. I'm not sure if that makes us look like we're exhibiting good leadership. I just don't feel the urgency about this. That's where we got stuck in our

committee. This came up in our committee near the end, and we just didn't feel like we had the time before the deadline to work up a proper proposal for amending the whole section.

Rep. Schatz: I'm looking at this sentence that says the legislative assembly may provide for payments to citizens of the state in the manner the legislative assembly determines appropriate. This would be what I'm thinking we would study. What manners would be appropriate rather than the fact that we could give money back. I think that's fairly clear in this. There is a technical difficulty in one part.

Sen. Triplett: Do you think there would be some value in including specifically the language that is proposed in the bill and putting that into a study resolution instead of just asking the legislative council to study Section 18 of Article 10 to say specifically that they should study appropriate methods under which the legislature could provide for direct payments back to taxpayers. In the study we would incorporate this new idea very specifically and then make sure that piece doesn't get lost? Would that be a compromise position?

Rep. Hatlestad: The suggestion here that we look for a way of returning money to the taxpayer to me is relatively cut and dry. We're going to cut a check. The legislature can decide how much, and you indicated we muddled through it the last time with the property tax thing, and we're doing the same thing again. I think we need a method to return money to the taxpayers. We need the ability to cut a check. I think I would be opposed to the study that would include that section. I think it's pretty cut and dry. I don't think that part needs to be studied.

Sen. Hogue: I don't have any objection. I don't know if there any support for the underlying amendment from the Senate. Maybe we should decide that. There is a lack of support for the underlying amendment itself. Testimony in our committee was that the cost of sending out these checks is between \$700,000 and \$750,000. It just seems like there are so many more

efficient ways to get money back to our taxpayers through reducing taxes, property tax, mill levy that we have. To study this to get this thing right seemed to us to be the best solution. I think if we're going to have a compromise on this might be wishful thinking.

Chairman Hatlestad closed the hearing on HCR 3019.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

House Constitutional Revision Committee

☒ Check here for Conference Committee

Hearing Date: 04/21/09

Recorder Job Number: 12061

Committee Clerk Signature	<i>Lou Engelson</i>
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Minutes:

Chairman Hatlestad opened the hearing on HCR 3019.

Chairman Hatlestad: The issue still facing us today is HCR 3019 and Senate amendments to the bill. The House proposed a constitutional amendment. The Senate proposed a study.

The House proposed a compromise including the constitutional amendment and the study at the recommendation of Legislative Council. The Senate told us no. Senate, any change in your position?

Sen. Hogue: I'll speak for myself. No.

Sen. Triplett: If the Senate had proposed a compromised measure it might be reasonable to add another whereas clause that references the fact that the legislature would like to be able to do direct refund. Say something like whereas the legislature has proposed to authorize direct refund of tax dollars to taxpayers. Then let the Legislation Council study Section 18 of Article X of the Constitution of North Dakota. Then insert the phrase saying including all alternatives for providing direct refund of taxpayer dollars to taxpayers.

Sen. Oehlke: I don't think that Sen. Triplett's idea is out of the perspective of what we ought to consider. I think it's more important that we do the right thing going forward and have the

right tax basis in place. Putting that whole perspective into a study, I don't think is such a bad idea. I think we could go back and convince our folks that we can make that a reality.

Chairman Hatlestad: I have no problem with the study. What I do have a problem is waiving the additional two years to simply say that the legislature if it wishes to send money back, they legalize the system of doing that. I think this particular constitutional proposal needs to be in place so we can deal with the issue should we need to in the near future.

Rep. Oehlke: Already we've run into numerous situations where we've had to revisit issues that we dealt with last session. So you're saying that you want to do something immediately. I don't know that anything in this world needs to be heard immediately.

Chairman Hatlestad: I'm thinking there are ways to return money to people that don't own property that maybe this would leave us a couple more options. With waiting another two years, I personally don't think it is necessary.

Rep. Griffin: I think that when we do put something on the Constitution, we should have it more thoroughly studied, and I agree with the portion in the House. Instead of doing one part and then another part, I would have no problem waiting. I think next legislative session, this is probably going to be less of an issue than it was this session with the oil revenues down and the economy as a whole going down. I would prefer to study it more thoroughly and put one completely revised section on to change the Constitution.

Rep. Schatz: I'm ready to vote on it right now. I believe in the way the original bill was. I don't see the harm in the people voting on it.

Sen. Hogue: I think we have the knowledge that we wouldn't have a need for this particular amendment in this legislative session. We study it in the interim and adopt a constitutional amendment to present to the people in 2012. I do agree with Rep. Griffin. I don't think you amend an entire section of the Constitution knowing that there are some defects. I think you

try to get it right, and get it in front of the people. I can't support the notion that we'll put this to a vote of the people knowing full well that there are three other problems with this entire section.

Chairman Hatlestad: The only portion of this was only one small portion and that is iffy. It may be alright according to the Legislative Council.

Rep. Hogue: I don't agree with the Legislative Council on that. They've come to a legal opinion based on a 1937 case which I don't agree with their reading that case.

Sen. Triplett: We should kill the bill as being unreasonable. That is actually not an unreasonable solution. Has anyone to your knowledge asked for an attorney general's opinion?

Chairman Hatlestad: Not that I'm aware of.

Rep. Griffin: If we amended it to incorporate the study, do you think you'd be able to kill the bill on the Senate floor, or do you not want to take the chance?

Sen. Hogue: It was amended to include both the study and the constitutional amendment?

Rep. Griffin: Because we'd have to have some sort of amendment I would assume because the Senate has already passed it dealing with that. If we amended it in some way that was what the Senate has, do you think you'd be able to take it back and vote it down?

Sen. Hogue: Logically we would defeat it. I think a good indication of that is what we did with Rep. Berg's bill. Nobody was crazy about sending money back instead of providing tax returns, reduction in rates. We took that out, and everybody was pretty supportive of it on both sides of it.

Chairman Hatlestad adjourned the meeting.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3019

House Constitutional Revision Committee

☒ Check here for Conference Committee

Hearing Date: 04/22/09

Recorder Job Number: 12109

Committee Clerk Signature

Lori Engelson

Minutes:

Chairman Hatlestad opened the hearing on HCR 3019.

Chairman Hatlestad: As I indicated after discussion with the original drafters of the bill, in order to keep it alive, they are willing to entertain a study. At this time I would entertain a motion.

Sen. Triplett distributed a proposed amendment. See Attachment #1.

Sen. Oehlke: Did we want to make sure it said shall consider.

Chairman Hatlestad: Our clerk indicated that a concurrent resolution is always considered.

Rep. Hogue: I thought that the last line where you have "direct refund", I would rather that say "direct payments" of tax dollars to taxpayers. A refund implies that you are giving somebody something back that they paid. I think we would want study the entire issue of whether we just want to give payments to taxpayers for any reason, whether they've paid their income tax or not.

Sen. Triplett: I have no objection to that.

Chairman Hatlestad: So you're saying you're putting in an alternative for payment?

Sen. Hogue: For direct payments of tax dollars. Might even say to citizens.

Chairman Hatlestad: No. We ran into a problem where an individual says you can't legally refund money to a person who hasn't paid the tax. That's why we changed it from a citizen to a taxpayer.

Sen. Oehlke: That issue will probably come up in a study.

Sen. Triplett: I would move the correct motion.

Sen. Griffin: Second.

The roll was called by the clerk.

6 yes, 0 no, 0 absent and not voting. Rep. Hatlestad will carry the resolution.

VR
4/22/09

PROPOSED AMENDMENTS TO ENGROSSED HOUSE CONCURRENT
RESOLUTION NO. 3019

That the Senate recede from its amendments as printed on page 1144 of the House Journal and pages 983 and 984 of the Senate Journal and that Engrossed House Concurrent Resolution No. 3019 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the resolution with "directing the Legislative Council to study Section 18 of Article X of the Constitution of North Dakota.

WHEREAS, Section 18 of Article X of the Constitution of North Dakota has existed unchanged for more than eighty years; and

WHEREAS, this constitutional provision has profound effects on state and political subdivision interaction with businesses and citizens and it is incumbent upon the Legislative Assembly to determine whether the constitutional provision adequately governs the current status of state and local government needs and limitations with respect to businesses and the citizens of the state; and

WHEREAS, legislation has been proposed to authorize direct payment of tax dollars to taxpayers, which action may be in violation of Section 18 of Article X of the Constitution of North Dakota;

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

That the Legislative Council study Section 18 of Article X of the Constitution of North Dakota, including alternatives for direct payments of tax dollars to taxpayers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly."

Renumber accordingly

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number HCR 3019 (, as (re)engrossed):

Date: 04-22-09

Your Conference Committee Constitution Revision

For the Senate:

For the House:

	YES / NO			YES / NO	
✓ Sen. Hoag	✓		Chair Hatlestad	✓	✓
✓ Sen. Oehleke	✓		Rep. Schatz	✓	✓
✓ Sen. Triplett	✓		Rep. Griffin	✓	✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1144 - _____

_____, and place _____ on the Seventh order.

✓, 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.

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

DATE: _____

CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: Triplett

SECONDED BY: Griffin

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HCR 3019, as engrossed: Your conference committee (Sens. Hogue, Oehlke, Triplett and Reps. Hatlestad, Schatz, Griffin) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1144, adopt amendments as follows, and place HCR 3019 on the Seventh order:

That the Senate recede from its amendments as printed on page 1144 of the House Journal and pages 983 and 984 of the Senate Journal and that Engrossed House Concurrent Resolution No. 3019 be amended as follows:

Page 1, line 1, after "resolution" replace the remainder of the resolution with "directing the Legislative Council to study Section 18 of Article X of the Constitution of North Dakota.

WHEREAS, Section 18 of Article X of the Constitution of North Dakota has existed unchanged for more than eighty years; and

WHEREAS, this constitutional provision has profound effects on state and political subdivision interaction with businesses and citizens and it is incumbent upon the Legislative Assembly to determine whether the constitutional provision adequately governs the current status of state and local government needs and limitations with respect to businesses and the citizens of the state; and

WHEREAS, legislation has been proposed to authorize direct payment of tax dollars to taxpayers, which action may be in violation of Section 18 of Article X of the Constitution of North Dakota;

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

That the Legislative Council study Section 18 of Article X of the Constitution of North Dakota, including alternatives for direct payments of tax dollars to taxpayers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly."

Renumber accordingly

Engrossed HCR 3019 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

HCR 3019

**TESTIMONY HCR 3019
PRAIRIE ROOM 3PM
FEB 11, 2009**

GOOD AFTERNOON MR. CHAIRMAN & COMMITTEE

**FOR THE RECORD, I AM GARY SUKUT, REPRESENTATIVE FROM
DISTRICT 1, WILLISTON**

**HCR 3019 IS A RESOLUTION TO AMEND THE CONSTITUTION TO
ENABLE THE LEGISLATIVE ASSEMBLY TO MAKE PAYMENTS TO
THE CITIZENS OF THE STATE IN THE MANNER THE
LEGISLATURE ASSEMBLY DETERMINES APPROPRIATE .**

**2007 SESSION – STRUGGLE TO PUT SURPLUS DOLLARS INTO THE
HANDS OF OUR CONSTITUENTS – REAL ESTATE TAXES – CANNOT
WRITE A CHECK BECAUSE THE STATE DOESN'T COLLECT THIS
TAX – CREDIT AGAINST INCOME TAX.**

**SECTION 18 OF ARTICLE X OF THE CONSTITUTION OF NORTH
DAKOTA PROHIBITS THE STATE FROM ISSUING A CHECK TO A
NORTH DAKOTA CITIZEN IF IT IS DETERMINED TO BE A GIFT.**

**THIS RESOLUTION WOULD BE PUT BEFORE THE VOTERS IN THE
FALL OF 2010 AND IF APPROVED WOULD BECOME LAW FOR THE
2011 SESSION.**

**THIS CHANGE IN THE STATE CONSTITUTION WILL GIVE THE
LEGISLATIVE ASSEMBLY ANOTHER OPTION FOR PUTTING
SURPLUS MONIES BACK TO THE CITIZENS AND I ASK THE
COMMITTEE TO MOVE THIS RESOLUTION FORWARD WITH A DO
PASS.**

THANK YOU FOR YOUR TIME!

Attachment #1

Fifty-first
Legislative Assembly
of North Dakota

**SENATE CONCURRENT
RESOLUTION NO. 4020**

Introduced by

Senators D. Meyer, Walden

1 A concurrent resolution for the amendment of section 18 of article X of the
2 Constitution of North Dakota, relating to the authority of the state,
3 counties, and cities to loan, give credit, or make donations to individuals,
4 associations, or corporations and to own stock in associations or
5 corporations.

6 **STATEMENT OF INTENT**

7 This amendment removes the prohibition that the state or any county or city
8 not loan, give its credit, or make donations to or in aid of any individual,
9 association, or corporation except for the reasonable support of the poor or
10 own stock in any association or corporation.

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

13 That the following proposed amendment to section 18 of article X of the
14 Constitution of North Dakota is agreed to and must be submitted to the
15 qualified electors of North Dakota at the general election to be held in
16 1990, in accordance with section 16 of article IV of the Constitution of
17 North Dakota.

18 **SECTION 1. AMENDMENT.** Section 18 of article X of the Constitution of
19 North Dakota is hereby amended and reenacted to read as follows:

20 Section 18. The state, or any county or city may make internal
21 improvements and may engage in any industry, enterprise, or business, not
22 prohibited by article XX of the constitution, ~~but neither the state nor any~~
23 ~~political subdivision thereof shall otherwise loan or give its credit or make~~

Fifty-first
Legislative Assembly

- 1 donations to or in aid of any individual, association or corporation except
- 2 for reasonable support of the poor, nor subscribe to or become the owner of
- 3 capital stock in any association or corporation.

#1

**TESTIMONY HCR 3019
LEWIS & CLARK ROOM
MARCH 24, 2009**

THANK YOU MR. CHAIRMAN. FOR THE RECORD, MY NAME IS GARY SUKUT, REPRESENTATIVE FROM DISTRICT 1, WILLISTON.

MR. CHAIRMAN AND COMMITTEE MEMBERS

AS YOU LOOK AT SECTION 18 OF HCR3019 - LINES 17 & 18 IN PARTICULAR -YOU ARE LOOKING AT A SECTION OF CODE THAT IS AT BEST CONFUSING TO MOST BUT IT IS THE SECTION IN THE CONSTITUTION THAT THE ND SUPREME COURT HAS DETERMINED THAT UNDER CERTAIN CIRCUMSTANCES THE STATE OF ND CANNOT ISSUE A CHECK - THE INTERPRETATION BEING THAT IT IS A GIFT WHICH THIS SECTION PROHIBITS -

EXAMPLE - LAST SESSION WE STRUGGLED TRYING TO PUT SURPLUS DOLLARS BACK INTO THE HANDS OF ND CITIZENS. WE FINALLY PASSED A BILL THAT PUT DOLLARS BACK IN THE FORM OF A CREDIT AGAINST OUR INCOME TAX - THE AMOUNT OF THE CREDIT BEING CALCULATED AS A PERCENTAGE OF YOUR PROPERTY TAXES, WHICH THE STATE DID NOT COLLECT. IF WE HAD TRIED TO WRITE A CHECK FOR THIS - IT WOULD HAVE BEEN INTERPRETED AS A GIFT AND ILLEGAL BY THE ND CONSTITUTION.

THIS CHANGE IN THE CONSTITUTION WILL SIMPLY ENABLE THE LEGISLATURE TO WRITE A CHECK TO ND TAXPAYERS - IF THEY DETERMINED STATE FUNDS WARRANT A RETURN OF FUNDS . THE LEGISLATURE WOULD DETERMINE HOW THE FUNDS WOULD BE DISTRIBUTED. MOST PEOPLE WOULD PREFER A RETURN WITH CASH - A SMALL REDUCTION IN YOUR INCOME TAX OR SALES TAX DOES NOT HAVE NEAR THE IMPACT AS CASH IN HAND.

THIS RESOLUTION WOULD BE PUT BEFORE THE VOTERS IN THE SPRING OF 2010 AND IF APPROVED WOULD BECOME LAW FOR THE 2011 SESSION.

HCR3019 WILL SIMPLY GIVE THE LEGISLATURE ONE MORE OPTION FOR THE RETURN OF SURPLUS DOLLARS TO ND CITIZENS. I HOPE WE CONTINUE TO HAVE THAT PRIVILEGE.

MR. CHAIRMAN AND COMMITTEE MEMBERS - GIVE THE PEOPLE OF ND AN OPPORTUNITY TO MAKE THIS CHANGE IN THE ND CONSTITUTION WITH A DO PASS ON HOUSE CONCURRENT RESOLUTION 3019.

THANK YOU FOR YOUR TIME. MR. CHAIRMAN, I STAND FOR QUESTIONS.

Sukut, Gary

From: Trenbeath, Thomas L.
Sent: Friday, April 10, 2009 11:26 AM
Sukut, Gary
Berg, Rick A.
Subject: HCR 3019

Rep. Sukut,

I have reviewed the Engrossed HCR 3019, and having run it by the AG, I cannot discern a motivation for the Senate's action in amending this to a study resolution. It is not an action on which this office was asked for input or opinion.

Tom trenbeath
Chief Deputy Attorney General

PAT,

Attachment # 1

Informal proposed amendments to HCR 3019

That the House accedes to the Senate amendments and further amends as follows:

Line 9, add "and

Whereas, legislation has been proposed to authorize direct refund of tax dollars to taxpayers, which action may be in violation of Section 18 of Article X of the Constitution of North Dakota;"

Line 13, after "Dakota", and add ",including alternatives for direct refund of tax dollars to taxpayers;"