

2009 HOUSE CONSTITUTIONAL REVISION

HCR 3055

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3055

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 02/25/09

Recorder Job Number: 9739

Committee Clerk Signature

*Lou Engelson*

Minutes:

**Chairman Koppelman** opened the hearing on HCR 3055.

**Rep. Rick Berg:** This resolution, 3055, really I think has a potential to provide another opportunity to the people of North Dakota. Currently we can put constitutional measures on the ballot if there is something that we feel the constitution needs to be changed. If we have a statutory change, we can't put that issue before the people. This bill would simply allow, if the situation arose, the legislature could put something before the people that would be a statutory change and not just a constitutional change.

**Rep. Meier:** Maybe you could state some examples for the committee so they have some good thoughts.

**Rep. Berg:** Historically one was the legal drinking age in North Dakota whether it should be 18 or 21. It was being contemplated by the legislature back then to simply put that on the ballot and have it decided by the people. You couldn't do that because that would require a change that wasn't a constitutional change. Let's go back to this fall. There were several issues relating to income tax. They were defeated but had it passed, those of you that looked at that. There were many errors and things that were not properly done in that statute. If we as a legislature make a change, then there's a question will this require a two-thirds vote of the

legislature or simple majority. I think this would enable us to make a correction and put it back before the people. I would say the same thing would be on some of the changes to WSI.

Those were clear changes, and we were able to address that. Having said that, there were improvements for things that we felt we could reflect back to the people and do them. The other issue that I think has been taken a lot of debate in this legislature is property tax. There may be cases where we want to make some changes, provide some more local control. We would want the local people to make that decision. This would enable us to put something like that on the ballot. Or, quite frankly, an issue like that could be put on the ballot for people to vote on. Again, where we have constitutional implications, it would be something that the people could vote on. I'm not sure what the issue specifically would be. I look at initiated measures. We could see more and more of those if there's some change that needs to be done to improve that, that's acceptable, we may wish to put that back for the vote of the people rather than waiting the seven-year period requiring a two-thirds vote.

**Rep. Conrad:** When I read this I thought of the situation in Illinois where (inaudible) President Obama situation where they could pass. We can't do that in North Dakota. You can't say you have to vote yes or no. This is kind of where we could say we don't want to have to make a decision on this. Let's just put it to the people.

**Rep. Berg:** I have been for 25 years voting yes or no. It should be a pass. On the other hand I can honestly say there's been a number of measures that I've voted on that I'm not quite sure what the implications will be or how people truly feel about it. There's issues that to me personally, as a representative of District 45, don't make a difference. But it means something where it would be appropriate for us to engage the people.

**Rep. Hatlestad:** Did you have in mind here just a simple majority would put it to the people or a super majority or two-thirds majority?

**Rep. Berg:** A simple majority of the house and senate. There were some issues that we felt ought to be voted on by the people. It would be much the same as this committee does with constitutional measures only it would apply to others. One of the issues that I see relates to changes that may come before us. All legislators hold the right of referral for initiated measures very high. When they are passed and acted on, the legislature is very cautious about not undermining the intent of that vote by the people. There may be situations where it just doesn't work. This would be a way to put that back before the people to approve it take it to some more effective level if the legislature so chose to do it.

**Rep. Schatz:** Do you in mind a number that could be put before the people as a statutory law every election? I guess I'm getting at a cluttered ballot when you get too many things going. The people kind of lose interest because of the number. Would there be a number that you would prefer that could be done every session?

**Rep. Berg:** There's no limit on the number of measures you can put on now. The reality is measures coming through the legislature that would be in the back of people's minds is what's appropriate. If we would shift through those and only those with the utmost importance would go forward and be placed on the ballot. It's more efficient and quicker. I look at North Dakota's history, and we've hardly had any issues on the ballot in the last 10 or 15 years, be it a referral or an initiated measure, it certainly comparison to any other state. I firmly believe that people feel they have access. I look at this as another step that the people would appreciate.

**Chairman Koppelman:** Do you see this potentially being an issue where people could get lazy and say why should I go through all that [getting signatures] when I can just talk to my legislator and I'll get them to introduce something and put it on the ballot through the legislature. Do you see that being a problem?

**Rep. Berg:** The thing about this issue, I'll use the lottery as an example. We had the lottery come through the legislature many years and the question was simply to put it on the ballot. That was defeated by the legislature. It was defeated because I think the legislature clearly didn't think we needed to have the lottery. People collected signatures, and there was a vote on it. I think what you're saying would be tempered in some degree depending if it was an issue that people had strong feelings about. I don't think they would pass something forward. A perfect example would be the permanent oil trust fund. I feel very strongly about the permanent oil trust fund and how it is put in the statute. I'm sure you had bills that you did last time to put that in the constitution. I think the public is a little bit resistant to saying we're going to put this in the constitution. If we came up with a great idea on how to deal with that, we all in the back of our minds be a little bit reticent about saying this is what we are going to do knowing that it was voted on six months ago. This could be a tool in a situation like that. It may be a tool if we say here we have another idea for the permanent oil trust fund. It's not going into the constitution carved in stone. We allow the people to vote on it because then that will have a higher legislative standard before we change that in the future.

**Dustin Gawrylow:** My name is Dustin Gawrylow. I am the executive director for the North Dakota Taxpayer's Association. I believe that allowing the legislature to put statutes on the ballot would be another tool in the legislature's toolbox to better gauge the public opinion on issues. There are probably many issues where you voted no on a bill but would have voted yes to put it to a vote of the people. I think this allows every legislature to get that public opinion every time so at least, even if it fails on the ballot the next time around, you get a better sense of where the public stands on that issue. It will also help answer the "just let us vote on it" that we often hear from regular citizens, constituents, etc. Essentially it will create a public vote of confidence in the direction that the legislature is moving if there are issues that you

know of. You want to take a step by step approach to it. Ask the people what they think.

Then you know what to do in the future as far as going further in that area.

**Chairman Koppelman:** If this were to pass do you think it would have a chilling effect on the legislature from the standpoint of both things that maybe the people had adopted, and there are provisions in the resolution that deal with, that the legislature could overturn that with a super majority? I think most of us as legislators would be very reluctant to do that because people had said this is what we want, to come back later and say it should be something else unless there is new information that came to light. But the reverse could be true. If a measure went before the people and the people said no, I think it would have the same reverse chilling effect from the standpoint any future legislature wanting to come back and make something law that the people had turned down.

**Mr. Gawrylow:** I think that this addresses the issue. If the legislature had the ability to take all the bills (inaudible) to the people, it would certainly help the legislative process because if they said no ten years ago and you ask them again, they may say yes this time. People are changing their minds on issues. It can't hurt the legislative process at all.

**Chairman Koppelman:** Any further testimony is support of HCR 3055. Any testimony in opposition to HCR 3055.

**Bev Nielson:** My name is Bev Nielson with the school board association. I just have a question of blending of this bill with 1347 which says that school boards can't take positions on initiated measures. Now they are going to start legislating statutes on the ballot, then I certainly wouldn't be able to take positions on those like boards do for bills that are up here at the legislature. These are some of those consequences that can domino down, and that would be a real big concern to us if you're going to start legislating (inaudible) and we couldn't even take positions on those statutes.

**Fred Burns:** My name is Fred Burns representing North Dakota Education Association. It appears that if it passes this would create a third vehicle passing laws in the state of North Dakota in addition to the initiated measure and in addition to what the legislative body does. You get a third method to accomplish what these other two methods do. There are two other problems I would like point out. One is the 30 day limitation period. (Inaudible) The second catch you have here is that if passed, for seven years no legislative body could change the effect. It almost seems like that seven year provision runs a little contrary to what the purpose is. If during those seven years, whatever is changed would have to be (inaudible). For those reasons we express our opposition.

**Rep. Conrad** asks an inaudible question.

**Chairman Koppelman:** Just a clarification on the seven year window. It could be changed but it would take a two-thirds vote in both chambers of the legislature. I assume after that it could be just a majority.

**Stuart Savelkoul:** My name is Stuart Savelkoul. I am the executive director of the North Dakota Public Employee Association. Democracy is a wonderful thing, and I think that's really what the intention of this bill is. The fact is that the benefit of this bill could be argued because as I'm sure so many of you are reminded any time you get a letter from a constituent who might be upset with the decision you made. Sometimes people need to be reminded that legislators are people too. I would like to remind you that legislators, you are people too. You have the same opportunity to put an issue on the ballot through that process. My concern is that if that already exists, how to put issues on the ballot for the people to discuss, my concern is that this bill that issues that benefit, has some drawbacks. I have no issue with our current initiated measure process. The reality is that if we make it a lot easier for issues to end up on the ballot, that the potential for contradicting ballot measures will increase. (Inaudible)

legislative process is that at the end of the day you can only vote on one thing at a time. Once you vote on any issue on any bill, the passage of that bill will impact your ability to pass another bill. With this process, a number of bills could be passed on one event. The reason why the Public Employees Association would oppose this kind of legislation is that what you folks do during the legislative session, has an impact on public employees all the time. Our concern is if this doesn't pass the potential (inaudible) measures increases. We simply want to make it very clear that passing this particular type of legislation will only increase the likelihood of measures. It's also going to make it more difficult for public employees to impact the legislation that impacts them the most. If you get that pass option, it is going to become very difficult for legislators to vote against putting anything on the ballot because they could be labeled by any future opposition as anti democratic. I think that while this bill has great intentions, it simply has some drawbacks that could lead to dire consequences down the road.

**Chairman Koppelman:** Further testimony in opposition to HCR 3055. Any neutral testimony on HCR 3055.

**Rep. Berg:** The 30 day limitation, if that needs to be changed, my intention was not to have anything that is going to create undue burden. The two-thirds of seven years is the same as an initiated measure. Whether that is in here or not, that's not important. As I think more about this too, there are issues that have been faced time and time again. It may make sense to engage the public statewide on some of those things. I truly believe if we had contradictory measures on the ballot, what better signal for us if there is a ballot to raise taxes and a ballot to lower taxes. I think this is a tool that will help us be more effective to the citizens.

**Chairman Koppelman:** Any further testimony on HCR 3055. We'll close the hearing on HCR 3055.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3055

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 03/05/09

Recorder Job Number: 10320

Committee Clerk Signature

*Lou Engelson*

Minutes:

**Chairman Koppelman** opened the hearing on HCR 3055.

**Chairman Koppelman:** This is Rep. Berg's resolution with regard to the proposition that the legislature should be able to put a statute before the people to vote on as it now can put a constitutional revision or as the people currently can put the statute on with an initiated measure. Do we have any discussion?

**Rep. Hatlestad:** I move a do not pass.

**Rep. Griffin:** Second.

**Chairman Koppelman:** We have a motion for do not pass from Rep. Hatlestad. Second from Rep. Griffin. Any discussion?

**Rep. Kretschmar:** I do not think this is a very good idea. I'm afraid it would result in considerable buck passing.

**Rep. Schatz:** In theory I agree with this idea. I wish we would have had like a three bill limit. I'm going to vote in favor of it, but I understand why everybody else isn't.

**Chairman Koppelman:** Further discussion? Seeing none, I'll ask the clerk to call the roll on a do not pass recommendation on HCR 3055.

**6 yes, 3 no, 0 absent and not voting. Rep. Conrad was assigned to carry the resolution.**

Date: 03/05/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3055

**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 Hatlestad Seconded By Griffin

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 6 No 3

Absent 0

Floor Carrier: Conrad

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

DNP

REPORT OF STANDING COMMITTEE (410)  
March 5, 2009 4:27 p.m.

*libran*

Module No: HR-40-4172  
Carrier: Conrad  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HCR 3055: Constitutional Revision Committee (Rep. Koppelman, Chairman)  
recommends **DO NOT PASS** (6 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).  
HCR 3055 was placed on the Eleventh order on the calendar.