

2009 HOUSE CONSTITUTIONAL REVISION

HCR 3060

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3060

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 03/02/09

Recorder Job Number: 9982

Committee Clerk Signature

Lori Engleson

Minutes:

Chairman Koppelman opened the hearing on HCR 3060.

Rep. Jeff Delzer: I'm Rep. Jeff Delzer, District 8. I had the pleasure last session of being speaker of the house. One of the duties speaker of the house now has is they sit on the nominating committee for the board of higher ed. A discussion was made about why is there someone on there who is not an elected official of the state of North Dakota. This has nothing to do with the North Dakota Education Association. It has to do with somebody who's picking somebody for the board of higher ed when they go to the governor who is not in any way, shape or form, answering to the people who elect within the state of North Dakota. My understanding is the president of the NDEA is not elected by the state of North Dakota. The only other place in the constitution where there's a reference to somebody who's not a state official is also the same chapter where it references the student body, the North Dakota Student Association and my understanding is that is a non-voting member of the board of higher ed. The amendment would have the Attorney General sit on the nominating committee for the board of higher ed. The nominating committee proposes three names to go to the governor, and the governor picks one. It would replace the president of the NDEA.

Rep. Conrad: Has there been any problem that has come up because of this.

Rep. Delzer: I can't say that there is necessarily a problem. Is there a problem? No, I don't think so. The question is what does the NDEA have to do with higher ed. The fact of the matter is I have a problem when we take things away from elected people within government.

Chairman Koppelman: How long has this been in the constitution?

Rep. Delzer: Rep. Kretschmar says 1938. It was set up with three people. I think there was some political stuff that was going on. They wanted a board that would nominate people. It had a lot of political affiliation. Ten or twenty years ago the speaker of the house and the president pro tempore of the senate was added. After the governor picks one of the nominees, they also have to be approved by the senate.

Dustin Gawrylow North Dakota Taxpayer's Association provided testimony in support of HCR 3060. See Attachment #1.

Rep. Conrad: Have you seen a problem?

Mr. Gawrylow: I don't know if there is a problem but more philosophical thing to have a selecting committee selecting unelected people should all be elected. It makes it more consistent.

Robert Harms: My name is Robert Harms speaking on behalf of myself. I am in support of this bill. I do think it makes sense to have those who are picking the state board of higher education accountable to the public. As you know the state board of higher education represents about a third of the state's general fund. The current general fund budget that you have before you is \$780 million. I think the people who nominate for the governor to be appointed should also be accountable to the public. I want to also ask you to take a look at and consider an amendment to the resolution. That amendment would be on page 1, line 20 add at the end of the sentence "and serve at the pleasure of the governor". You would also need to delete article 8, section 6, subsection 3. What that would do would be the state board

of higher education accountable to the governor. The way the constitution is written the only way to hold the state board of higher education accountable is either through political pressure or an impeachment. The subsection in article 8 that I refer to is the section that basically says the state board of higher education members can only be removed through articles of impeachment. The other thing that that would do is make the state board of higher education more accountable to the public.

Chairman Koppelman: How would the articles of impeachment work in North Dakota. If for some reason someone would seek to remove the member, how would that work.

Mr. Harms: I can't walk you through that process. That's part of the reason I bring the amendment to you. When I was in the governor's office for 11 years, I don't remember in recent history, the last 30 to 40 years, an impeachment proceeding was ever brought against any official in North Dakota.

Rep. Schatz: You said you had two amendments. The first was on line 20. Where was the second one?

Mr. Harms: Line 20 you insert the language I indicated. Then you would have to add an amend that would delete, article 8, section 6, subsection 3. It's not to this bill.

Chairman Koppelman: When you suggest that these folks serve at the pleasure of the governor, is there a danger of that becoming a political football, and they could be replaced with every governor coming into office. Since the confirmation is an appointment by the governor and confirmation by the senate, would it make sense to have similar structure? Maybe the governor with the consent of the legislature for removal?

Mr. Harms: I can't cite the century code specifically, but there is a chapter 54 that when a new administration takes place, statutorily the majority of all the board and commission members

resign so that a new administration can at least appoint a new class of members on that board or commission. That automatically happens statutorily when a new administration takes office.

Rep. Conrad: That's a pretty recent law though. And we haven't a change in an administration (inaudible).

Mr. Harms: No, that's not correct. That law has been in the books for a number of years. I know when Shafer was elected and took office, that law was proposed then.

Rep. Uglem: When I think of the North Dakota Education Association, I think of K through 12. Do you count the professors?

Mr. Harms: No.

Chairman Koppelman: Further testimony in support of HCR 3060. Testimony in opposition to HCR 3060.

Dakota Draper, President of the North Dakota Education Association offered testimony in opposition to HCR 3060. See Attachment #2.

Chairman Koppelman: In your research did you do any investigation into what the North Dakota Educational Association was in 1930 versus what the North Dakota Education Association is in 2009.

Mr. Draper: They represent teachers and educators across the state. It's fairly the same.

Rep. Schatz: in the 1930s you said they were nonpartisan, the NDEA. Did they endorse candidates for political office?

Mr. Draper: I do not know.

Rep. Schatz: But you do now endorse?

Mr. Draper: Yes.

Chairman Koppelman: Further testimony in opposition to HCR 3060. Any neutral testimony on HCR 3060.

Josh Askvig: My name is Josh Askvig. I am a former student member on the board of higher education. As a former student member I can tell you that a student member does have a vote.

Rep. Schatz: Eighty percent of the teachers are NDEA members.

Mr. Askvig: I will note answer.

Chairman Koppelman: What is the process like for the student representative on the board. When you became a member, how did that work?

Mr. Askvig: The NDSA has monthly meetings mostly made up of students of elected senators from around the state. Sometimes just interested students who want to keep up with what was happening. We were nominated by our colleagues. Three names are forwarded to the governor's office, and the governor selected one of those three.

Chairman Koppelman: So did you campaign?

Mr. Askvig: Personally, I was approached by the current student board member at the time.

Chairman Koppelman: Further mutual testimony on HCR 3060. Seeing none we'll close the hearing on HCR 3060.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3060

House Constitutional Revision Committee

☐ Check here for Conference Committee

Hearing Date: 03/05/09

Recorder Job Number: 10322 and 10324

Committee Clerk Signature

Lou Engelson

Minutes:

Chairman Koppelman opened the hearing on HCR 3060.

Chairman Koppelman: This one is Rep. Wald's. I believe Rep. Delzer brought it in. Wald is the primary sponsor. This is the one that replaces the North Dakota Education Association with the attorney general on the nominating committee for the board of higher education.

There was a recommended amendment to that. Any discussion on the measure?

Rep. Kretschmar: There is a proposed amendment that they serve at the pleasure of the governor. I don't think that is good. I really don't think we should go for this and change it.

There was no testimony that the committee is not working well. They wanted someone who is an elected official to be on the committee.

Rep. Conrad: I agree.

Chairman Koppelman: I asked during the hearing for some history on NDEA in terms of what was then called the North Dakota Educational Association. (See Attachment #1) I believe it was 1930 or 1938 that this was adopted. The president was testifying he couldn't really give me that. There is a web site the NDEA has and it says this: Our past...The Association became more active in the area of negotiations after 1969 when the state's first negotiations law was passed. The NDEA's increased political activity began about the same time. It now

interviews and recommends for election those candidates who are friends of education as determined by their voting record or their interview answers. That is about the only history that I'm able to find in terms of the changes that were discussed during the hearing about the nature of the organization.

Rep. Schatz: This is about the state board of higher education, right?

Chairman Koppelman: Yes it is.

Rep. Schatz: And NDEA deals with K-12.

Chairman Koppelman: That's my understanding. The reason I brought this up is that I really did have that question.

Rep. Conrad: They recently had a convention in Minot, and I attended parts of it, and I found it to be all about education and about improving the quality of education in the classroom.

Rep. Schatz: I think the principle is that all the people on this thing are elected except one. That's the idea behind this. I guess I understand why they feel it's necessary to get all elected people.

Chairman Koppelman: Personally I would feel more comfortable if there was a K through 12 advisory board of some sort. Then I would think having it in makes a lot of sense. I think it's a historical thing, and the question is, do we want to change it?

Rep. Griffin: I can understand the issue with the elected officials, but you can also look at it from the perspective that originally this was three nonpartisan individuals because the superintendent of public education is a no party ballot. I guess if we are going to make this change, I don't think we should make it just for the sake of we want elected officials on there. I don't know what that adds to the selection process. If we are going to look at changing it, you could question, what does the attorney general know about selecting someone to the board of higher education. What does that office really have in common. I think if we were going to

pass something, we should look at it in more detail and maybe try to come up with different individuals.

Chairman Koppelman: Is there an entity that is more of a higher education entity that would make some sense versus a K through 12? I suspect the reason they were placed on this advisory group is that they were educational in nature and therefore this is a board that deals with education.

Rep. Conrad: After the hearing someone reminded me that the faculty has one position on the board of higher education so faculty is represented.

Chairman Koppelman: We don't have the school board's association or somebody else who is a K through 12. I don't know if there is an association of higher folks.

Rep. Conrad: There is the American Association of University Professors, AAUP, but that doesn't distinguish between administrators and faculty and faculty, is already represented.

Chairman Koppelman: Since we don't have a motion yet, let me ask this question to the committee. This does specify general election also. Do we want to change that to primary just in case this were to pass to balance things more.

Rep. Schatz: I would want it to be on the primary ballot. I'll move that amendment.

Rep. Uglem: Second.

Chairman Koppelman: Moved and seconded that we change this from the general election to primary election.

A voice vote was taken and motion carried.

Rep. Schneider: I agree with Rep. Kretschmar. I don't see the need for this resolution at all. I also agree with Rep. Griffin. I don't know that the attorney general has anything to do with this. I move a do not pass.

Rep. Griffin: Second.

Chairman Koppelman: Moved by Rep. Schneider, seconded by Rep. Griffin for a do not pass on HCR 3060. Further discussion? Seeing none, I'll ask the clerk to call the roll.

A roll call vote was taken by the clerk.

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

March 5, 2009

VR
3/5/09

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3060

Page 1, line 12, replace "general" with "primary"

Renumber accordingly

Date:

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 3060



Legislative Council Amendment Number

Action Taken

☐ DP

☐ DNP

☐ DP AS AMEND

11

DNP AS AMEND

Motion Made By

Seconded By

[illegible]**Total**

Yes

No

Absent

Floor Carrier:

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

Voice vote DP to change amend -

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

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3060

**HOUSE CONSTITUTIONAL
REVISIONS COMMITTEE**

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Legislative Council Amendment Number _____

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

Motion Made By Schneider 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 8 No 1

Absent 0

Floor Carrier: Uglem

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

DNP

REPORT OF STANDING COMMITTEE (410)
March 6, 2009 10:18 a.m.

Module No: HR-39-4191

Carrier: Uglem

library Insert LC: 93105.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HCR 3060: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (8 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3060 was
placed on the Sixth order on the calendar.

Page 1, line 12, replace "general" with "primary"

Renumber accordingly

2009 TESTIMONY

HCR 3060

North Dakota Taxpayers' Association

HCR 3060 Testimony

- March 2nd, 2009 -

Mr. Chairman and Members of the Committee,

Currently, subsection 2 of section 6 of Article 8 of the North Dakota Constitution creates a selection committee consisting of "the president of the North Dakota education association, the chief justice of the supreme court, the superintendent of public instruction, the attorney general, the president pro tempore of the senate, and the speaker of the house of representatives."

HCR 3060 moves to replace an unelected member of this committee with the Attorney General, an elected constitutional officer. As the constitution currently reads, the NDEA President is the only unelected member on this selection committee.

This proposed amendment will create more consistent language in the constitution, and increase the amount of elected representation in the process of managing the Board of Higher Education.

The Taxpayers' Association supports all bills and amendments that seek to increase the input of elected officials over unelected boards and committees.

We strongly urge a Do Pass recommendation on HCR 3060.

March 2, 2009

HCR3060 Testimony

Dakota Draper, President

North Dakota Education Association

Chairman Koppelman, members of the House Constitutional Revision Committee, I am Dakota Draper, President of the North Dakota Education Association. I stand before you today in opposition to HCR3060. As you know, this resolution asks the voters to change the Constitution to remove the President of the NDEA from the State Board of Higher Education nominating committee. The President of the NDEA would then be replaced by the Attorney General. Currently, the NDEA President serves with four others to make up the nominating committee of five. The other four are the Chief Justice of the Supreme Court of North Dakota, the Superintendent of Public Instruction, the Senate Pro Tem, and the Speaker of the House.

I understand that the legislators that are proposing HCR3060 are acting out of a need, a necessity they feel to make sure that all members of this committee are elected by the voters of North Dakota. But, it raises the question of why was the President of the North Dakota Education Association originally placed on this committee?

I have done a little research on that question:

In the 1930's, the ND State Board of Higher Education was formed. At that time the nomination committee consisted of three members, the Chief Justice of the North Dakota Supreme Court, the Superintendent of Public Instruction, and the President of the North Dakota Educational Association. Later the word "educational" was changed to "education".

At that time, the three members had to unanimously agree for any candidate's name to be placed in front of the Governor for his or her consideration. Additionally, it was decided that three names had to be submitted for every single opening on the Board.

Then in 1996, a measure was placed in front of the voters to add the following two positions: the Senate Pro Tem and the Speaker of the House. Additionally, the requirement for a unanimous vote for a nomination to move forward was changed to allow just four out of the five committee members to concur. This measure was approved by the voters in 1996 and that is the current setup of this selection committee today.

So, why was the NDEA President added to the nominating committee when the State Board of Higher Education was formed?

Well, to be truthful, I was unable to definitely find the answer to that question. However, I did pose the question to Chief Justice Vandewalle, last year. It was his belief that in the forming of the Nominating Committee for the ND Board of Higher Education in the 1930's, the framers

wanted the three most non-partisan persons they could find to keep politics out of the selection of the higher education board members. Further, in asking around on why the change was made in 1996, the best rationale I heard was that the Legislature wanted more of a say as to who was going to sit on State Board of Higher Education.

So, what is my point? It is my belief that our framers wanted the nominations of names going to the Governor for consideration to NOT be made with politics as a factor. I believe they went to great lengths to avoid that in the 1930s. Then, a corner was turned in 1996, when the Senate Pro Tem and the Speaker of the House were added. Two partisan office-holders were added, making the Committee three non-partisan, two partisan.

If HCR3060 were to pass with the Attorney General replacing the NDEA president, the scale will tip. Partisan office-holders would hold the majority.

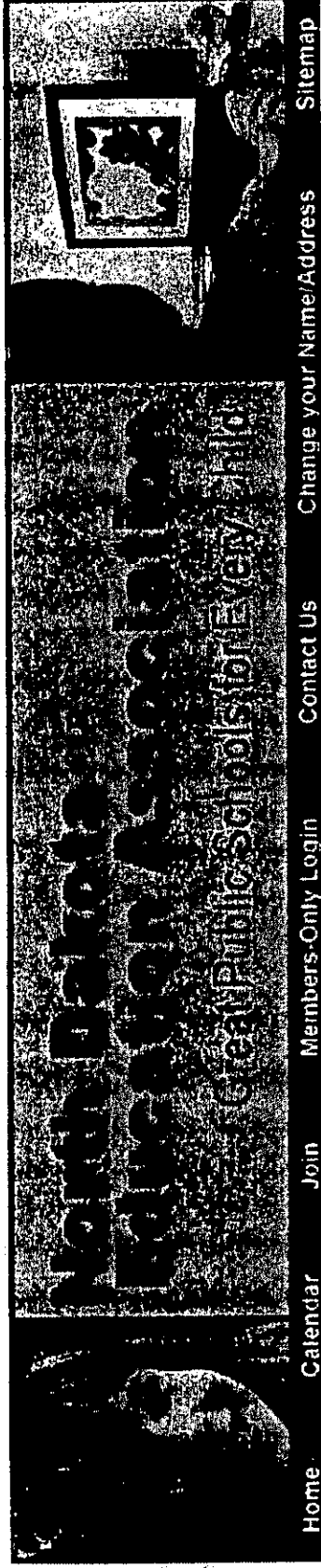
Further, the proponents of this bill argue that this change will ensure the State Board of Higher Education membership is recommended by elected officials. Well if this is their goal, that aim is not fully reached with the passage of this resolution. As you may know, the student member of the State Board of Higher Education, who is a voting member, is not recommended by any elected official. The student member is selected from a list of three student names forwarded to the Governor by the North Dakota Student Association (NDSA). The NDSA is a non-elected body that represents students at the various institutions of higher education in ND. I state this fact not to take anything away from the NDSA but, rather to point out that having non-elected officials make recommendation to the Governor will continue to occur even with the passage of this resolution. This fact makes the argument in favor unpersuasive.

Members of the committee, you need to decide if that is what the state of North Dakota would like to see, more partisanship in the nomination of members to the State Board of Higher Education. It is my belief that they do not.

Further, it is worth noting that the NDEA does have some members in the higher education ranks. They appreciate the input their Association has on potential nominees to the SBHE and want to see that position maintained.

Mr. Chairman, members of the committee I appreciate your time and respectfully ask that you give HCR3060 a Do Not Pass Recommendation.

Attachment #1



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NEA Website

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The History of the NDEA

Our Past...

The Association became more active in the area of negotiations after 1969 when the state's first negotiations law was passed. The NDEA's increased political activity began about the same time. It now interviews and recommends for election those candidates who are friends of education as determined by their voting record or their interview answers.

Much of the Association's activity today focuses in three areas; instruction and professional development to provide inservice training and otherwise aid in improving teacher performance in the classroom; negotiations designed to improve the economic welfare of teachers and educational opportunity of children; and political action to influence and have input into the decisions that affect education - all of which are political.

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