

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3016

2007 HOUSE CONSTITUTIONAL REVISION

HCR 3016

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3016

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 11-21-07

Recorder Job Number: 3615

Committee Clerk Signature

*David Hearn*

Minutes:

**Chairman Koppelman:** Opened the hearing on HCR 3016.

**Rep Dekrey:** When I look around the legislative chambers I see people who have been around awhile that I think would be excellent in some of those statewide offices, but they're excluded from being appointed to them in most cases by our constitution. I think that whoever's the appointing authority, which is usually the governor, should have the ability to pick a legislator if that's who he/she thinks is the best person for that job. I put this in to put it before a vote of the people to see if they agree with ... that's my sole purpose of this resolution.

**Rep Kretchmar:** I've put in another resolution to repeal the whole section.

**Rep DeKrey:** This isn't my original resolution, my original resolution just took the language out (and if you look at the names on there) the leadership decided the people wouldn't go for that, they thought the legislators were just trying to be one up on the people, so they modified it to say if you hadn't voted for (*can't understand*) then you would be eligible. In effect it does the same thing, but he thought that it would be more acceptable to the general population. The original one I had in was probably very similar to what you have in, which I think is cleaner, but you have to look at what would pass.

**Representative Meier:** Has then ever been attempted before?

**Rep Dekrey:** Not that I know of but I do know of times that people's names have come up for jobs and then it's come out that they wouldn't be available because they're a legislator. When a legislator does get appointed to something, it's usually kind of skirting around edges of the constitution to do it and I don't think that's quite right. What I found when I talked with Legislative Council when they did that for me was the reason that was put in the constitution was because 100 years ago North Dakota people were still pretty mistrustful of the government. They felt the Republicans, usually being the party in power, being able to create a position with a good salary and appoint all of their good buddies ... therefore; the provision was put in there that a legislator couldn't hold a position. With the staggered terms we have now it's easier now then ever before.

**Senator O'Connell, District 6:** Appeared .. see attached HCR 3016 Summary.

**Representative Conrad:** I understand there's legislation with Rep Kretschmar to eliminate this section altogether ... do you think that might be simpler?

**Senator O'Connell:** Personally I haven't talked to the main sponsor of the bill; I have no problem with whatever cleans it up ... just so the main sponsor agrees with it.

**Chairman Koppelman:** This is kind of ironic when you think of it, that legislators do it on their own pay all the time and you can argue benefiting from that vote and yet they're precluded from seeking other offices.

**Senator O'Connell:** That's a good point.

**Representative Berg:** The essence of the bill is if there's a position in state government that's open and the best candidate is someone who's currently elected to the legislature, I don't think that should preclude someone from appointing that person. On this bill we looked at two things, the statute, we looked at trying to define compensation. At the end of the day and

looking at what other states have done & some law cases that were overturned when states tried to do that, I think the thinking was ... let's just be straight up with the people and let the people make the decision and however it comes out. I also talked with Rep Boucher and he had family meeting so he couldn't be here, but he certainly supports this resolution.

**Chairman Koppelman:** I might add that I believe Sen Stenehjem is out of town and Sen Nething did stop by to say he couldn't be here, but he supports this proposal.

**Vice Chairman Kretschmar:** There's another resolution that I sponsored to repeal this section of the constitution.

**Representative Berg:** When I looked at that my concern was, this was part of our original constitution in 1889, and my thinking was that prior to that there were probably were instances where a legislative assembly created a new position and funded that new position and was probably created because there were one or two legislators that were very passionate about that position, so after the session they tried to decide who they could get to do this and probably the best person was a legislator ... I'm sure there was a public outcry from that. The other thing that could be true where people want to take care of their own members and create positions ... we're adding 250 positions in state government this session. My reason for not wanting to take this section out was to make it clear that we don't think it's appropriate and if a new position's created it may be a double salary or something like that and a legislator would be appointed ... what we're saying is that if you take the money argument out of it, is it appropriate to have a legislator appointed?

**Representative Klemin:** If this is so, can a member of legislature be appointed to a new office (*can't understand*) ?

**Representative Berg:** Correct

**Representative Klemin:** Do you have any comments or thoughts on (*can't understand*) what would still be appropriate?

**Representative Berg:** Again, we're taking a quantum step forward with this proposal and that would be looking some of the agency heads, i.e.: Human Services, Highway Patrol or others ... there's people in our assembly that have a lot of experience that would be appropriate. If done appropriately, I don't see any harm in what you're suggesting ... having said that, I think that appearance to the public might be, well Rep Klemin worked very hard to set this new legal component and then he's appointed to that & there may be the perception out there that would be hard to defend.

**Representative Klemin:** I don't usually get appointed to things I'm not passionate about.

**Representative Berg:** That's what we all do, we get appointed to things that we're passionate about but we don't get compensated for and it takes time away from our real vocations. Any time you take it to the people it gets a lot of scrutiny and questions and what I'm trying to do is make it as clean as possible and that there's no huge personal gain to be perceived that someone received from the legislature.

**Chairman Koppelman:** There does seem to be a disconnect here because we in the legislature vote to raise our own pay all the time but the constitution says (*can't understand*) pay raises if we're re-elected or come back for another term but (*can't understand*) that can't take place if that legislator is appointed to an interim position that would (*can't understand*). As I understand this, it would not apply to state employee types of positions, with this constitutional revision, but it applies to offices, if I'm reading it correctly.

**Representative Berg:** That might be something worth getting a little more detail on. I think it relates to offices ... my question would be would the will the Department of Human Services (*can't understand*) would that apply or not. In the Senate we had the Supreme Court open up

and a Senator who was an attorney that would have been a viable candidate, wasn't considered because he served on the legislature. We've had Tax Commissioner and other positions and immediately any legislator would not be considered for those positions. I think some of the secondary positions, a legislator could be appointed to.

**Chairman Koppelman:** If no further support, opposition or neutral testimony, we'll close the hearing on HCR 3016.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HCR 3016** & HCR 3053

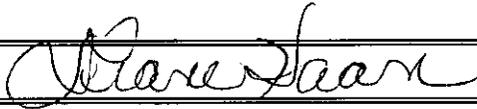
House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 2-26-07

Recorder Job Number: 3913

Committee Clerk Signature



Minutes:

**Chairman Koppelman:** We'll take a look at **HCR 3016**. We've got 2 resolutions on this topic, this one is a less drastic change to the constitution ... **HCR 3053** takes this section out all together. **We'll take a look at both of these together.**

**Representative Dahl:** *(can't hear)* I think HCR 3016 is a more appropriate vehicle then HCR 3053.

**Chairman Koppelman:** Would you care to make a motion on that?

**Representative Dahl:** I move a **DO NOT PASS** on **HCR 3053**.

**Vice Chairman Kretschmar:** I would agree with Rep Dahl, but I would like to propose an amendment on HCR 3016, Line 20.

**Chairman Koppelman:** We'll try to stay on HCR 3053 and return to HCR 3016.

Representative Dahl has moved a **DO NOT PASS** on **HCR 3053**. Do we have a second?

**Representative Meier:** **Seconded the motion.**

**Chairman Koppelman:** Any discussion?

**Representative Owens:** It's been amended once in 1883 and was so small you could barely tell it, so to repeal it would be an uphill battle.

**Chairman Koppelman:** We'll call the roll on a **DO NOT PASS ON HCR 3053**

**Yes 9 No 0 Absent 0**

**Carrier Representative Dahl**

**Chairman Koppelman :** We'll return to **HCR 3016** ... Vice Chairman Kretschmar, you have an amendment to propose?

**Vice Chairman Kretschmar:** I would move an amendment on **HCR 3016**, on Line 20, to remove the language "or to any office for which the compensation has increased" then I'd remove all of the new language on Lines 21 and 22.

**Representative Klemin:** I'll second it.

**Chairman Koppelman:** So you'd be removing the language that disallows a member of the legislature from being appointed to an office for which the compensation is going to increase. Any further discussion?

**Representative Klemin:** I think the language as it would read if the amendment is adopted is a lot cleaner than the current language. There was probably a valid reason for the way it was written at the time, but I don't believe that we have the same rationale.

**Chairman Koppelman:** We'll take a **voice vote on the amendment on HCR 3016**

**Yes 8 No 1 Absent 0**

**Representative Griffin:** I move a **Do Pass As Amended on HCR 3016**

**Representative Meier:** **Seconded the motion**

**Yes 9 No 0 Absent 0**

**Carrier: Representative Meier**



Date: 2-26-07  
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3016

House Constitutional Revision Committee

Check here for Conference Committee

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

Action Taken No Pass As Amended

Motion Made By Griffin Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conrad	✓	
Vice Chairman Kretschmar	✓		Representative Griffin	✓	
Representative Dahl	✓		Representative Schneider	✓	
Representative Klemin	✓				
Representative Meier	✓				
Representative Owens	✓				

Total (Yes) 9 No 0

Absent 0

Floor Assignment Meier

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

**REPORT OF STANDING COMMITTEE**

**HCR 3016: Constitutional Revision Committee (Rep. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3016 was placed on the Sixth order on the calendar.

Page 1, replace lines 5 through 8 with:

"This measure removes the prohibition on appointing a member of the legislative assembly to an office for which the compensation has been increased by the legislative assembly during that member's term of office."

Page 1, line 20, overstrike "which" and insert immediately thereafter "that" and overstrike ", or to any office for which the compensation has been increased,"

Page 1, line 21, remove "by a greater percentage than any general"

Page 1, line 22, remove "compensation increase provided for all permanent full-time state employees"

Renumber accordingly

2007 SENATE POLITICAL SUBDIVISIONS

HCR 3016

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3016

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 22, 2007

Recorder Job Number: 5440

Committee Clerk Signature

*Shirley Borg*

Minutes:

**Chairman Cook** called the Senate Political Subdivision to order. All members (5) present.

**Chairman Cook** opened the hearing on HCR 3016 relating to the appointment of a member of the legislative assembly to a full-time appointive state office.

**Senator O'Connell**, District 6, introduced and testified in support of HCR 3016. (Attachment #1)

**Senator Warner:** Has it been in the court rulings to determine the cost of living laws allowance which is granted to all state employees constituted a pay raise. We ran into some issues in judiciary because this salary increase was much higher than had been issued to all the other ones. Has there been any court decision on whether cost of living allowance constituted a pay raise.

**Senator O'Connell:** I can not answer that question.

**Representative Berg**, District 45 testified in support of HCR 3016. I think when our constitution was put in place over a hundred years ago, there was a concern of legislative assemblies creating position that a legislature might take or adding substantial compensation to a position. I do not think that is a reality today. Having said that our constitution is pretty clear but the problem we have in ND is a lot of legislators have a wealth of experience and

knowledge that there are positions in state government that they would be the best person for that position. Unfortunately there is a gray area and the gray area is if your in this legislative assembly and you vote on a compensation package which we generally do every year and a position opens up that is a governor appointee position you can not be in the mix whether it is the supreme court or a state wide office. What this bill attempts to do is not to really change the intent of the constitution which again from my opinion is creating a new position or providing out of the ordinary compensation for a position that someone knows that they would be appointed to but would simply say that if your legislator and your again appointed to a position that received the normal compensation, you would be eligible to serve if you were selected. As a legislator I am concerned about this issue being before the people and how the people would view it.

**Senator Warner:** Has it been in the court rulings to determine the cost of living laws allowance which is granted to all state employees constituted a pay raise. We ran into some issues in judiciary because this salary increase was much higher than had been issued to all the other ones. Has there been any court decision on whether cost of living allowance constituted a pay raise. Has that been challenged?

**Representative Berg:** In my opinion if that were challenged it would lose. I have talked with the attorney general in great depth before this was introduced and his opinion was that you would lose. If it went to a court the court would rule that it was unconstitutional. Looking a five or six other states went through that and in every case they lost.

**Chairman Cook:** You mentioned five or six other state. That sends the message to me that this type of language in a constitution is quite common. It would be interesting to see where these states are.

**Representative Berg:** To make it clear, the question that Senator Warner asked that had been challenged in other states and so their appointments were overturned in other states because their language was like ours.

No further testimony in support, opposed or neutral on HCR 3016.

**Chairman Cook** closed the hearing on HCR 3016.

**Senator Olafson** moved a Do Pass.

**Senator Warner** seconded the motion.

Discussion

Voice Vote: All members in favor Yes 5 No 0 Absent 0

Carrier: **Chairman Cook**



**REPORT OF STANDING COMMITTEE**

HCR 3016, as engrossed: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3016 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HCR 3016

# HCR 3016 Summary

Senator David P. O'Connell

This measure provides that during the term for which a member was elected to the legislative assembly, the member of the legislative assembly may be appointed to an office for which the compensation has been increased by the legislative assembly if the increase was not a greater percentage than any general increase provided for all permanent full-time state employees.

## HCR 3016 Summary

Senator David P. O'Connell

This measure removes the prohibition on appointing a member of the legislative assembly to an office for which the compensation has been increased by the legislative assembly during that member's term of office.

While serving in the legislative assembly, no member may hold any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office which that has been created by the legislative assembly during that term.