

2011 HOUSE CONSTITUTIONAL REVISION

HCR 3023

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee
Prairie Room, State Capitol

HCR 3023
February 2, 2011
Job #13872

Conference Committee

Committee Clerk Signature

Mary Main

Explanation or reason for introduction of bill/resolution:

A concurrent resolution to create and enact a new section to article IV of the Constitution of North Dakota, relating to the vote required to enact an income, sales, use, or motor vehicle excise tax rate increase by the legislative assembly.

Minutes:

Chairman Koppelman: Open the hearing on HCR 3023. Title was read. Testimony in favor by the sponsor.

Representative Belter, District 22: What this HCR 3023 does is require a 60% vote in both houses of the Legislature to approve any increase in the rate for State income, sales, use, and motor vehicle tax. The reason I brought this forward is over my years of legislative experience, I've come to believe that budgeting is based on the money made available. I think it is the best interest of the people of North Dakota that we make the question of raising taxes a little more difficult than just a majority vote. In nearly all bond issues, a 60% vote is required. One of the reasons for that is we want to protect the minority. When you require a 60% vote to increase taxes, you are protecting the minority. We've seen interest in the United States Senate with their rules dealing with a 60% vote. It seems like it's unfair but when you really stop and think about it, it was set up to protect the minority and that's why I think it's so important that we here at the State Legislature think about the tax payer and that requiring a 60% vote for tax increases is a good policy to have for the State of North Dakota. The good thing about this is we can let the people decide. All we need to do is put it on the ballot and I hope that the committee would consider this favorably. If you have any questions, I can try to answer them.

Representative Winrich: You mentioned the rules of the United States Senate, but there's been much publicity in the last few years about how those rules are often abused by the minority and basically to block any action. Would it not be possible for this to be abused as well?

Representative Belter: No, because once it's passed, we can't change the rules. In the United States Senate, they can change their rules. They have the ability to manipulate things based on what they see as their political advantage. In this, once the people speak and put this in the Constitution, it's a non-debatable issue. It will be 60% and that's the way it will be.

Representative Winrich: The other thing that strikes me as curious is that it applies to income, sales, use, and motor vehicle excise tax. So it wouldn't apply to, for example, the oil extraction tax or any mineral extraction tax. We're considering such tax on potash. It wouldn't apply to the excise tax on alcoholic beverages of various gross receipts taxes that essentially replace sales tax in certain cases. Is that correct?

Representative Belter: Yes, that is correct. I didn't want it on any of the energy taxes, fees, anything like that. It's strictly income tax, the sales, and the motor vehicle use tax so that it's explicit. Not all these other taxes that we deal with every legislative session. With sales and income tax, other than reducing income tax, we've not voted any increases except back in 1989 when we voted in a tax increase and then people had them referred.

Vice Chairman Kretschmar: It wouldn't apply to any decrease in a rate of tax would it?

Representative Belter: That is correct. The 60% vote would only be for increasing those taxes.

Chairman Koppelman: I have one. Your reasoning on why this is different than any other vote we take where majority rules. Is it because you're depriving citizens of something of value, of property? Is that why you think it should rise to a higher standard?

Representative Belter: It's very easy for us to spend money and we spend based on our income. In order to hold the line on government spending, you have to hold the line on revenues. Consequently, I strongly believe that we need to make it more difficult to raise taxes. When you are raising taxes, there's always, I use the term 'protect the minority', because in many instances there are a lot of people that have no income tax obligation. So when you vote a tax increase, there's probably a certain group that's going to bare most of the responsibility of that tax increase. I think it's important to hold the line on revenues and also in a sense you are protecting the minority by having a higher vote requirement just as we are in bond issues. That's why we have a 60% vote on bond issues because the minority of people are the ones that pay the vast majority of the taxes. Subsequently, you require the 60% vote to protect that group. I think that's an important aspect of our tax laws.

Chairman Koppelman: Further testimony in support of HCR 3023? Any testimony in opposition to HCR 3023?

David Kemnitz, President of AFL-CIO: You may wonder what labor has to do or concerned about this. We represent public employees from the private sector and federal, all facets of it. I have been here for 16 sessions as a lobbyist for workers as a citizen. Amending the Constitution is always a serious undertaking. The North Dakota Constitution is quite readable and we all respect it. In the venue of taxes and service, what is needed is flexibility, not rigidity. If you have changes in what happens with your economy, your industry, your communities, and you have control of money flows, and you have an emergency and you know it and you can't adjust it because there aren't enough of you at 60% but there might be at 50% plus one, you've tied your hands. In a constitutional amendment, I don't know of many in the public that would deny themselves a tax cut. To put it into the public is serious when you lock it into the Constitution. It takes your flexibility

away. I know as a citizen that some of the tax increases that you've passed have been threatened with an initiated measure referendum and the people voted on it. There are ways to mitigate what the public may think is something beyond to onerous for them to except. That's what we have built into our Constitution. To build in something that's a higher bar than exists today is to say that this body, or future bodies, don't have the diligence to control the budget and to make the decisions that are best on the populous and the situations they're faced with. You know better than any, how many different calls upon you about things that affect you districts and constituents. A threshold that's at 60% to raise taxes when the other side of that threshold is at majority plus one, so we cut taxes because it's a good time to do it, it looks like we can give relief to a segment of our population or the entire. The very next year, or session, it's upside-down. To raise taxes, you have to have the 60%. It's not a balance. It does not give anyone the flexibility nor does it keep in your hands the responsibility of addressing those things. In a good hearted, well meaning tax cut or rebalance of the tax structure and everything changes on you, how do you rebalance it? For instance, if you rebalance income tax structures, and some pay more and some less in the end, the well funded minority that pays more can challenge everything you've done in a Constitutional question if this would pass, and throw it out. In your efforts to rebalance and make fairer, the tax structures you have, a very small majority that has enough funds to do so can stop everything you've tried to do. We have some questions and concerns and feel that when you deal with the Constitution and when you writ in something, it become rigid. It becomes no movement. It deminish your ability to make the decisions you're elected to make.

Representative Winrich: Given the experience that the State had in 1989 with the referral and the struggles that ensued in the following decade or more, with limited state budget and in some cases no inflationary increases in budgeting, would you say it's too easy to raise taxes?

David Kemnitz: It's very difficult to and especially in the next election cycle. We just had one and some of that was a back lash. It makes those that are here now more responsible than ever about how they address taxes and increases or distribution. The public has a way to bring that accountability to the fore. Usually it stops what you've tried to do so now you have to have a special session or wait for the next session to address it again which could do great damage. And then use the 60% muster that could be the minority that says you can just fester and boil and suffer all you want. We can stop any change that you want to produce to mitigate concerns within your budget. I would say if there's a process, it takes some time, but the citizens have spoken before. The state of North Carolina wants to reinstitute a 2% tax on modular homes. Over 40% of the placement of new homes is modular. They had removed it at one time and now say this is an unbalancing of things that happened in that state. Because of that growth, to the home builders, it was an unfair advantage to them so they are addressing that. That's an instance that they need to revisit.

Representative Holman: The precedent here of dealing with a legislative 3 to 2 margin on a tax issue. My concern is this going to a ground. It's very common when the people vote on super majorities but is this precedent, a new action on a tax issue?

David Kemnitz: I don't know that it's new, but it's reasserted. The Senate and the House can limit themselves anyway that they want. If they want to put this into play as part of their

requirements, I think they can do that. It can become a law. Once it becomes constitutional, how do you unravel that except to the extent to going back to the public. I think it becomes more of a burden than ever for the minority especially.

Chairman Koppelman: Just a little information. The legislature cannot bind any future legislative assemblies so while we might make a rule that would govern us for this session, for example that said we need a 60% vote if we chose, we couldn't make a statute to do that because the principal is that we can't bind future legislatures. I don't know if other states do this or not. That would be an interesting question if our intern or committee member wants to do some research. It's not unprecedented to have super majority votes in the legislature. For example, the Legacy Fund which passed last year by the people of North Dakota. It came through this committee last session and I also chaired the Conference Committee on it. That's one of the provisions that to get at those dollars that don't automatically flow into the General Fund, the ones that are sequestered for a time. It does require a 2/3 vote to get at that principal. It can happen after six years but it does require a super majority. Not unprecedented but unusual perhaps.

Representative Owens: Is some major crisis going to happen? We haven't raised taxes in 10 years. I was just wondering is there something on the horizon that even if we do give any tax refunds right now, that we'd have to turn around and raise?

David Kemnitz: I would say in all the experiences throughout, maybe that could be better answered by Vice Chairman Kretschmar who has a rich and long history of the processes and the ups and downs. In those small towns in rural North Dakota, you always prepare for the worst and hope for the best. If something happens, and it does in this state with the various industries, for instance, if you removed the use tax of materials to coal mines and power houses and turned around and said we now have a big hole because we lost income in another area. We need to make it up again and not burden another sector. How do you get back to where you should be if you've lost a substantial portion of your revenue and need to replace it. It takes a majority to cut it but now it's 60% to put it back. It's not balanced. It's not easy to do either.

Representative Owens: I'm not for or against it right now. I understood one of the issues that the bill carrier was talking about in that's why bond issues are done that way because the brunt of bond issues are handled by property owners and to have a simple majority, depending on the area, could have a large majority of non property holder obligating the property holders. The theory here is, with income tax particularly but in all general taxes that the average person would pay, it could be a situation that 50 plus 1 where those that vote for it are actually not representing the majority of the people who would be paying for it. That was his example of the income tax. This being a Constitutional Amendment, even if we pass it, it's up to the people to vote on it. Are you concerned about the people voting on this because this is not tax to cut, all this is putting greater control on the legislature from the bosses, the people from the State?

David Kemnitz: My concern is from the viewpoint of a citizen, having the people we elect come to us and say shackle us. We are out of control. We cannot help ourselves and so we need a higher bar to reinstate something that we may have cut earlier or to rebalance tax structures. That's a message that would ring through. I don't know that the legislature

wants to do that and it's not their intent. It is easy when it comes to a vote of the people. What would the average citizen think if someone comes to them and said if you shop at this store, you get a dollar off, they're going to go to that store because it's human nature to reduce your burden or your cost. Why wouldn't they? Why a legislative body would hinder itself, remove some of its flexibility, especially in revenue and service. Why would they do that other than to make a statement of some sort by some that it's out of control? If it's out of control, the voters vote you in and out. If your part of your constituency and they know and respect you and believe that you're doing the best you can, then that's part of the package. You go back and say I believe this. I believe that what we did was right and here's why. If you go back and say I couldn't help it, we couldn't get 60%, sorry. That's not a good excuse for any. I understand going back to a group of hardnosed negotiators who say let's cut the rubbish, let's cut this excuse, why? Part of that is that you make your case and you hope that they follow or believe and trust. That's what the vote was about in the first place.

Chairman Koppelman: Further testimony in opposition to HCR 3023? Any neutral testimony to HCR 3023? We'll close the hearing to HCR 3023.

Representative Holman: Could we have our intern look into any other state that might have something similar to this? Not all 50 states, just surrounding state.

Chairman Koppelman: That information should be readily available and I can give you some names to do that.

2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee
Prairie Room, State Capitol

HCR 3023
March 24, 2011
Job #15979

Conference Committee

Committee Clerk Signature	<i>Mary Main</i>
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Minutes:

Chairman Koppelman: This resolution requires a 60 percent vote to increase taxes. I think if it passes, it should be moved from the general ballot to the primary and we would have to do that by an amendment.

Representative Kasper: I move that we amend HCR 3023 and put it in the primary election.

Representative Schatz: Second.

Voice vote taken. Motion carries.

Representative Streyle: I move a do pass as amended.

Representative Meier: Second.

Vice Chairman Kretschmar: This is an old friend that's been before this committee two or three times in previous sessions. I cannot support raising the percentage for increasing taxes in our state. The legislature has survived 120 plus years with a majority vote to either raise or lower taxes and I think it should stay that way.

Representative Holman: I will not support this. We are elected by the people of North Dakota to make decisions. If we make bad decisions they will throw us out. I don't think that creating a super majority in this case would be prudent or wise because it does give one vote more authority than another and I don't think that's fair.

Chairman Koppelman: I'll just point out that it does exist on some things such as bond issues for example.

Representative Holman: Typically the money issues deal with funding or building projects and things of that sort. General fund moneys are not subject to super majorities. It tends to be very specific outlining the projects.

Representative Winrich: I'm going to agree and oppose this do pass recommendation. When I think about the situations where we do require a supermajority such as ratification of a Constitutional amendment or a motion to end debate in most parliamentary

procedures, you're really doing something very major in those situations. You're changing principles or guidance of government stopping someone from saying what they wish. I don't think taxes rise to that level. We tinker with taxes in just about every session. It's a very common thing for lawmakers to deal with. I don't think this is an appropriate amendment.

Chairman Koppelman: Further discussion? Call the roll on a do pass as amended recommendation on HCR 3023.

6 Yes, 4 No, 1 Absent Do Pass as Amended Carrier: Representative Meier

March 24, 2011

VK
3/24/11

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3023

Page 1, line 10, replace "general" with "primary"

Renumber accordingly

Date: March 24, 2011
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3023

House Constitutional Revision Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Kasper Seconded By Rep. Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Conklin		
Vice Chairman Kretschmar			Representative Holman		
Representative Kasper			Representative Winrich		
Representative Louser					
Representative Meier					
Representative Owens	AB				
Representative Schatz					
Representative Streyle					

Total (Yes) 10 No 0

Absent 1

Floor Assignment _____

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

Replace "general" with "primary"
to move to the primary
election.
Voice vote carries.

Date: March 24, 2011
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3023

House Constitutional Revision Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Streytle Seconded By Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conklin		✓
Vice Chairman Kretschmar		✓	Representative Holman		✓
Representative Kasper	✓		Representative Winrich		✓
Representative Louser	✓				
Representative Meier	✓				
Representative Owens	AB				
Representative Schatz	✓				
Representative Streytle	✓				

Total (Yes) 6 No 4

Absent 1

Floor Assignment Representative Meier

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

REPORT OF STANDING COMMITTEE

HCR 3023: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (6 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HCR 3023 was
placed on the Sixth order on the calendar.

Page 1, line 10, replace "general" with "primary"

Renumber accordingly