

**2013 HOUSE JUDICIARY**

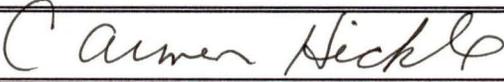
**HB 1446**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1446  
February 20, 2013  
Job 19285 & 19355

Conference Committee



## Explanation or reason for introduction of bill/resolution:

Relating to certification of delegates to a constitutional convention to amend the United States Constitution; and to provide a penalty.

## Minutes:

Testimony 1,2

**Chairman Kim Koppelman:** Opened the hearing on HB 1446.

**Chairman Kim Koppelman:** Time on tape 1:04 to 6:02. Introduced the bill. Handouts #1 proposed amendments and #2 testimony. See attached.

**Rep. Lois Delmore:** Asked about page 2 line 24 section 6 who would be appointed or would the whole assembly be asked to appoint the delegate.

**Chairman Kim Koppelman:** It would be up to the Legislative Assembly and we would know if there has been a call for a Constitutional Convention. It would be to the Legislative Assembly as to how we want to deal with this. If we wanted to have a special session to decide or we may want to use the authority we have to designate someone.

There was discussion on Class C felony if there is a violation at the Convention and how this would work.

**Vice Chairman Klemin:** Reopened the hearing after a short recess.

**Rep. Maragos:** In your historical research, if a constitutional convention was called, how many delegates would North Dakota have to send?

**Rep. Koppelman:** It would depend upon the nature of the call. It isn't well-defined.

**Rep. Hogan:** How would the delegates currently be chosen?

**Rep. Koppelman:** I think the other gentleman is more informed on that.

**Roman Buhler, National Director of the Madison Coalition:** Testified in support of the bill: Time on tape 3:19 to 22:55. We believe in restoring a balance of state and federal

power. The authors of the Constitution understood there needed to be a balance not only between the House, the Congress, the Courts and the President, but a balance between the states and the federal government. They gave the states a number of rights. One distinguishes between rights which are given states and powers which are given states to ensure that those rights are respected. The authors of the Constitution gave the states two powers. One was the power to choose Senators, and since the passage of the 17<sup>th</sup> amendment that is no longer a power of the states. The other power is the power to propose amendments. What does this bill actually do? It empowers you to force Congress to propose an amendment that two-thirds of the states want. There has never been an Article 5 Convention. The 1787 Convention is sometimes referred to as a runaway. There are two things you should understand about the 1787 Convention. The first is that most of the delegates who went to the convention had no real limits on their authority. The resolutions that sent them were broad enough so that all but a handful were acting within their authority when they proposed this document. There were no limits on the authority of those delegates. Secondly, there were no anti-runaway convention laws. There was no enforceable process to limit their authority, to replace them if they exceeded their authority and to punish them if they exceeded their authority. This bill is a legislative process that will prevent what happened in 1787 from reoccurring. The option that empowers you is the action you took last year when you proposed the Madison Amendment. If 34 states propose a specific amendment and limit the convention to an up or down vote on that amendment, Congress will have to either propose the amendment or call a convention. We have legislative supporters and activity in 31 states. In regards to the questions regarding how many votes North Dakota will get and how the delegates are chosen, the authors of the Constitution did not answer those questions. Another reason that Congress may want to avoid the convention and propose the amendment instead is because they would have to answer these controversial questions. But the strategy involved in this bill is to make sure that no matter how a convention is constituted, the majority of delegates at the convention would be bound and have their authority limited. How do we know that if we pass this law, some court somewhere isn't going to strike it down? We've designed this strategy so that it works no matter what the courts do. The first step in the selection process for delegates is that delegates have to take an oath that they will honor and respect the law. If a delegate breaks their oath, I think courts would uphold this law because of the 10<sup>th</sup> amendment which reserves to the states powers not given to the federal government. Nowhere in this document does it say that states don't have the authority to limit their delegates. This law puts in place a set of limits that do two things. One is they prevent a runaway convention. The other is they empower you as state legislators to the job that the authors of the Constitution gave to you; which is to make sure that Congress does not abuse its power. You have an opportunity in this committee to play a very important role in the restoring of a balance of state and federal power.

**Rep Maragos:** If we pass this bill, and the state then says that our delegation cannot do anything other than what a constitutional convention is called for on an amendment, but none of the other 50 states do that and then they change things, we have instructed our delegation not to be a part of anything that can legally happen and then we lose our voice. Can that possibly happen?

**Mr. Buhler:** If you read the bill, it does not prohibit delegates from engaging in a debate about other amendments that might come up. It does not prohibit delegates from voting on

amendments. It only prohibits delegates from voting to either consider or approve an out-of-scope amendment. It protects the country and North Dakota against the risk of a runaway convention. We don't want to authorize delegates to propose an amendment that the state did not authorize the convention to consider. But if the convention does begin to consider those other amendments, North Dakota delegates may still participate in shaping those amendments. But in deference to the instructions of their legislature, they are not allowed to propose an amendment other than the amendment that ND authorized. That's the balance between giving delegates the ability to vote their consciences and participate in the process without authorizing them to participate in a runaway convention.

**Rep Klemin:** On subsection 7 on page 2 lines 27-31, what are your thoughts on the procedure as to how these things are done? How do you immediately remove a delegate or determine that they are attempting to cast a vote in violation of the section? How do you replace that person? Who does the replacing? The last line says vote cast in violation of the section is void. Who makes that determination?

**Mr. Buhler:** If a delegate casts a vote and the convention and delegate are informed by the state authorities, then the convention has a choice to either honor the wishes of the state and say the vote is void or if the convention chairman counted the vote, someone in the convention can object and hold a vote in the convention to determine whether or not to count the vote. If they chose to recognize the vote, then it would go to court and the court would have to decide.

**Rep Klemin:** In an Article 5 convention is not dependent upon legislation like this. Of those 38 states, of all the states at this convention, they may or may not have legislation like this. So it may or may not be that they have had delegates that have taken this type of oath.

**Mr. Buhler:** If you are from NY and the delegate who violated this law was from ND, you in NY still have to decide whether you are going to recognize the vote of a delegate who violated their oath and violated the law.

**Rep Klemin:** I don't see anywhere in the bill where there is an official empowered with the authority by the legislative assembly to remove that delegate?

**Mr. Buhler:** This is in line 27, 28, 29 and 30: Is immediately removed from office and replaced by an alternate.

**Chairman Kim Koppelman:** I believe line 24, item 6 addresses that concern.

**Vice Chairman Larry Klemin:** It doesn't say to me that that official has anything more than the authority to provide guidance on request. I don't see in here where there is some official that has the authority to decide that a delegate is attempting to cast a vote in violation or that there is the authority to immediately remove that delegate or replace that delegate with an alternate. Maybe there is some other language that needs to be in this. Is this the exact same language that's being considered in these other 31 states?

**Mr. Buhler:** No. Each state legislative counsel has had their own idea of how to draft this so there is no single model. In looking at this, I would agree with you. The language in 27-

31 could be clarified to specify that the official designated by the legislature has the authority to designate who becomes a delegate and exactly when a delegate ceases to be the authorized delegate.

**Rep. Delmore:** What do you think a constitutional convention should look like? Who's going to pick up the tab for it? There will have to be a central location for it to take place. What is your vision on how this would work? How many people do you think should come from ND versus California versus NY versus NH?

**Mr. Buhler:** My vision is that a convention never happens.

**Rep. Delmore:** You're proposing for a convention. I want to know what you think it would look like. Otherwise, there's no reason to pass this bill if it's never going to happen. Is it a threat to Congress?

**Mr. Buhler:** The reason this bill is so powerful is because it enables two-thirds of the states to force Congress to propose a specific amendment without a convention. I don't believe the result of this bill is going to be a convention. I believe the result is going to be to empower you as state legislators to work together on a bipartisan basis to force Congress to propose specific amendments that 34 states agree on. That is my vision. If there were a convention and what would it look like? The answer to that is very hard to tell because the states would take a position and assert that they have the right to decide how to choose delegates. Small and medium size states would assert that the convention should be a one vote per state convention. A lot of states would assert that the convention should be an electoral vote or popular vote convention. Congress would haggle with how to choose delegates and inevitably someone would sue. Then the Supreme Court would ultimately decide these issues. I don't know. I'm here because I have a vision of how to empower states, as the authors of the Constitution intended them to be, to force Congress to be accountable because Congress doesn't want a convention.

**Rep. Delmore:** Is your livelihood going from state to state and testifying? Do you have a website? How do you contact legislators? How did you get here today without being a registered lobbyist?

**Mr. Buhler:** I was asked to come and testify on behalf of this legislation.

**Chairman Kim Koppelman:** In ND you are required to be a registered lobbyist if you're representing another interest. Mr. Buhler is here on his own, representing himself today and his interest in this issue.

**Mr. Buhler:** My wife wishes that I got paid to do all this. It is my wish that at some point this will become an issue that I could get paid to do it. At this point, there aren't too many interests that want to see a restored balance of state and federal power. It's not an issue that has engaged a lot of people. I'm doing this because I felt a sense of responsibility. I travel around the country doing this because I think it's important. I do get paid a little to help legislators draft bills. That's not lobbying; it's legislative drafting. When I come here, I come at my own expense.

**Rep. Paur:** You say the reason this bill is powerful is that it empowers the states to call a convention. Isn't that power currently with the states?

**Mr. Buhler:** Yes it is. But the power to call a limited convention is not clear. The Supreme Court has never ruled on whether states can limit the scope of a convention they call.

**Rep. Larson:** How many states actually have this law enacted now?

**Mr. Buhler:** There are no states that have this law on the books now. There are quite a number of states which are considering this law at the current time. We are working with legislators and political people in more than 30 states on this.

**Rep. Larson:** How long have you been working on trying to get this accomplished?

**Mr. Buhler:** The Madison Amendment was introduced in Congress in 2010. The first of these "no runaway convention" laws was introduced in 2012.

**Chairman Kim Koppelman:** The Madison Amendment itself was passed by the ND legislature in 2011.

**Rep. Delmore:** Do you have any written testimony for us?

**Mr. Buhler:** I do not have written testimony prepared but I can prepare a short written statement.

**Chairman Kim Koppelman:** I've heard some discussion that there probably should be some amendments to the bill. What are the wishes of the committee? Perhaps we should allow the committee time to prepare amendments if you would like and then consider our action on this on Monday?

**Rep. Klemin:** Since this is not a model act and since it seems that these states are all doing their own thing along this general vein, it would be nice to see what some of the other states have actually drafted. Did you look at anything like that?

**Chairman Kim Koppelman:** Yes I did. I looked at the basic idea. I consulted with Mr. Buhler. I came up with most of the language in this bill with legislative counsel. I'm sure Mr. Buhler would be willing to work with the members of the committee to come up with amendments.

**Vice Chairman Larry Klemin:** I'm at a loss on if we should amend this at all if the intent is to never use it.

**Chairman Kim Koppelman:** This is an interesting idea. During the Cold War, the Doctrine of Mutually Assured Destruction was talked about a lot. The hope was that neither side would ever use their nuclear weapons. This is a little like that, but that's grasping for an analogy on the spot. To re-empower the states, the states need the authority to be able to propose a single amendment to the Constitution without fear. States cannot introduce legislation in Congress. The Madison Amendment has been introduced in Congress. I think

the point of this is if we pass this measure and if we pass the amendment that I handed out, coupled with the Madison Amendment that we passed 2 years ago, those three pieces create an environment where the states will no longer fear proposing an amendment to the Constitution. The restoration of power is achievable if that fear is removed. It's not that a convention would ever be called. It's that Congress would propose an amendment when a critical mass of states issued that call. We as legislators would have the opportunity to ratify that amendment or not.

**Vice Chairman Larry Klemin:** This is a pretty complex subject. I don't know that I'm going to be able to make that decision in such a short time. This subject isn't likely to come up in the next 2 years. Wouldn't it be more appropriate to study this issue and come up with something that we can agree on after we have more time to look at the issue and see what the other states are doing?

**Chairman Kim Koppelman:** It wasn't my intent for this to come at the eleventh hour. What happened was there were people interested in the constitutional amendment. We had a later deadline. I delayed the hearing on this bill simply because I wanted the committee to be able to look at it in tandem with the constitutional amendment because they are companion pieces. I apologize if the committee feels rushed.

**Rep. Toman:** The Constitutional Resolution seems a little simpler than the bill itself, so that gives us a little protection if there were to be a convention. Maybe we want to deal with the resolution rather than the bill.

**Chairman Kim Koppelman:** When we propose constitutional amendments, if we move them out of this body, they go to the vote of the people. I think this is a good discussion.

**Rep. Delmore:** This bill would bind them to it.

**Chairman Kim Koppelman:** Would bind the delegacy?

**Rep. Delmore:** Whatever they did on the resolution. If they voted for it, this is the basis for what they're voting for.

**Chairman Kim Koppelman:** It's a little different. What the bill does is it ensures that any delegate authorized from ND to a constitutional convention, should there ever be one, would be bound to the narrow purpose for what that convention was called. What the amendment would do is it would say if a runaway convention occurred, then our state would not be able to consider those items for ratification. The intent is for enough states to adopt those kinds of measures so that the fear of a runaway convention is dissipated because it can't take effect.

**Rep. Delmore:** Not a single state has passed this. I feel that this is very complicated legislation and it has wide range implications for our state. Right now, I don't think I can support this until I have a lot more information and I see what other states are doing.

**Chairman Kim Koppelman:** We have a couple of Article 5 resolutions in ND that we've passed. One is the Madison Amendment to avoid runaway conventions. Another was passed during the last session would require a vote of the states having to do with the federal budget. That's why I introduced this during this session; to say if there is a convention, this is the policy we would choose to control our state's representation and to ensure that a runaway convention wouldn't occur.

**Rep. Lois Delmore:** Perhaps we want to see how those resolutions resonate with our voters.

**Chairman Kim Koppelman:** These are not resolutions that voters vote on. These are not ND Constitutional Amendments. These are calls of our state Legislature for Congress to propose these amendments or call a convention to propose the amendments.

**Rep Maragos:** I'm not sure I can support this resolution but I will offer an amendment that say this will not take effect until at least 38 other states have passed it in basically the same form. So that if we send a representative they are not at a disadvantage to all the other representatives from the other states.

**Chairman:** It wouldn't be 38, if I understand what you're aiming at. It would be 13 because if 13 states have measures like this then no runaway convention product could be ratified because it takes 38 to ratify.

**Vice Chairman Larry Klemin:** This seems like a little bit of a cart before the horse situation. What if the voters don't vote in favor of this? Maybe we need to see if the ND constitutional amendment is adopted first.

**Chairman Kim Koppelman:** That's an interesting suggestion. I'm not opposed to entertaining those ideas. If the Legislature passes this saying we think states should be re-empowered, we think if there is ever a Constitutional Convention it should not be a runaway convention and we in ND don't have to participate in a runaway convention and here is an amendment to ensure that.

**Vice Chairman Larry Klemin:** I don't see a convention like that happening in the next 18 months so we could do this at the next legislative session.

**Chairman Kim Koppelman:** We did pass the Madison Amendment last time. This is simply to shore that up.

**Chairman Kim Koppelman:** Closed the hearing.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1446  
DATE February 25, 2013  
JOB 19443

Conference Committee

*Caamen Hickle*

## Explanation or reason for introduction of bill/resolution:

Relating to certification of delegates to a constitutional convention to amend the United States Constitution; and to provide a penalty.

## Minutes:

Attachments 1,2

**Chairman Kim Koppelman:** Opened committee work on HB 1446.

**Vice Chairman Larry Klemin:** Has concerns about being ahead of all the other states and doesn't know if the other states will be working on this next year so there shouldn't be an Article 5 convention before they our next session. So feels this is premature. He doesn't like the sledge hammer approach of the bill and questioned who would want to be the delegate and risk going to prison. He also feels the Chairman of Legislative Management could send an email on the vote instead of sending a delegate. He stated the bill is too punitive.

**Chairman Kim Koppelman:** If a convention is convened for a purpose of adopting an amendment could take a lot of deliberation and discussion to determine the outcome. He thinks the language being strong in the bill is if someone deliberately violating the oath they have taken to represent the state there should be some recourse.

**Vice Chairman Larry Klemin:** He doesn't think they would have an opportunity to discuss the language in the amendment because an unauthorized amendment means something that varies from the exact text of amendment contained in the application. So if there is a difference in the exact text there is no room to discuss what the amendment should be.

**Rep. Kathy Hogan:** She stated her sister teaches constitutional law at the NY University and her concerns were if there were a convention it would be with no discussion. You would adopt what needs to be adopted and there would be no process at all.

**Chairman Kim Koppelman:** Drafted an amendment.

**Rep. Kathy Hogan:** The realities of it are you wouldn't really be having a constitutional convention you would be ratifying what the states have done and you can petition congress to do that now. Essentially the idea of having a convention is to have a discussion and what would be the purpose of having a convention at all if you couldn't discuss any issue?

**Rep. Gary Paur:** The point of this is if it got to a convention level then you would focus just on this issue no mandates to the states not open it up to discussing other things.

**Rep. Kathy Hogan:** You can petition Congress to do that now.

**Rep. Gary Paur:** You can petition but they probably won't do it.

**Rep. Kathy Hogan:** But if all states did that petition and there were the two-thirds of the states, it's all the same process.

**Rep. Randy Boehning:** He was concerned with the changing of the balance of power and feels there needs to be a super majority because there would be too much flux.

**Chairman Kim Koppelman:** The bill wouldn't deal with that but how a delegate would be bound and sworn if they represent North Dakota.

**Rep. Diane Larson:** Asked if he was going to propose amendments to trigger this law if other states did it?

**Chairman Kim Koppelman:** The amendment passed out does that. We want to follow the Constitution and pointed out page 3 line 1 on the proposed amendment.

**Rep. Andy Maragos:** Made a motion for do not pass.

There was not a second.

**Chairman Kim Koppelman:** Asked to consider another idea and handed out a proposed amendment for a Legislative Management study.

**Rep. Ben Hanson:** Asked if the study amendment was in lieu of other amendment?

**Chairman Kim Koppelman:** I would prefer to give the bill a do pass but if that is not possible I would make a study to give the bill a do pass.

**Rep. Diane Larson:** Moved the first amendment.

**Rep. Ben Hanson:** Second the motion.

**Vice Chairman Larry Klemin:** Supports the amendment to the bill but does not support the bill even if it is amended. He said the last session passed the Madison Amendment and now find out we are the only state that has done that. The other states are saying they don't want to do it that way and now we have this bill. We don't need to be the first state in the union to do something, he feels we need to see what the other states are going to do and supports the study.

**Rep. Andy Maragos:** Called for a question.

Voice vote - failed

**Vice Chairman Larry Klemin:** Moved the study amendment.

**Rep. Gary Paur:** Seconded the motion.

Voice vote - passed.

**Vice Chairman Larry Klemin:** Made a motion for do pass as amended.

**Rep. Gary Paur:** Second the motion.

11-3-0

**Rep. Gary Paur:** Will carry the bill.

**Chairman Kim Koppelman:** Hearing closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1446

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to United States constitutional conventions."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SCOPE OF UNITED STATES CONSTITUTIONAL CONVENTION.** The legislative management shall consider studying, during the 2013-14 interim, issues related to the calling of a convention under article V of the United States Constitution, including concerns associated with a "runaway" convention and methods through which states have addressed those concerns. The study must consider the impact of House Concurrent Resolution No. 3048 adopted by the sixty-second legislative assembly and similar actions taken by other states as well as other actions taken by states to reassert the constitutional authority of the states. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2-25-12  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1446

House Judiciary 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. Lasse Seconded By Rep. Hanson

| Representatives               | Yes | No | Representatives   | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman        |     |    | Rep. Lois Delmore |     |    |
| Vice Chairman Lawrence Klemin |     |    | Rep. Ben Hanson   |     |    |
| Rep. Randy Boehning           |     |    | Rep. Kathy Hogan  |     |    |
| Rep. Roger Brabandt           |     |    |                   |     |    |
| Rep. Karen Karls              |     |    |                   |     |    |
| Rep. William Kretschmar       |     |    |                   |     |    |
| Rep. Diane Larson             |     |    |                   |     |    |
| Rep. Andrew Maragos           |     |    |                   |     |    |
| Rep. Gary Paur                |     |    |                   |     |    |
| Rep. Vicky Steiner            |     |    |                   |     |    |
| Rep. Nathan Toman             |     |    |                   |     |    |
|                               |     |    |                   |     |    |
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Total (Yes) \_\_\_\_\_ No \_\_\_\_\_  
Absent \_\_\_\_\_  
Floor Assignment \_\_\_\_\_

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

*Voice Vote - Failed  
Proposed amendment for legislative  
Management study handed out by  
Rep Koppelman.*

Date: 2-25-13  
Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HR 1446**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13, 0790.01002

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

Motion Made By Rep. Klemin Seconded By Rep. Paur

| Representatives               | Yes | No | Representatives   | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman        |     |    | Rep. Lois Delmore |     |    |
| Vice Chairman Lawrence Klemin |     |    | Rep. Ben Hanson   |     |    |
| Rep. Randy Boehning           |     |    | Rep. Kathy Hogan  |     |    |
| Rep. Roger Brabandt           |     |    |                   |     |    |
| Rep. Karen Karls              |     |    |                   |     |    |
| Rep. William Kretschmar       |     |    |                   |     |    |
| Rep. Diane Larson             |     |    |                   |     |    |
| Rep. Andrew Maragos           |     |    |                   |     |    |
| Rep. Gary Paur                |     |    |                   |     |    |
| Rep. Vicky Steiner            |     |    |                   |     |    |
| Rep. Nathan Toman             |     |    |                   |     |    |
|                               |     |    |                   |     |    |
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Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote - Passed*

Date: 2-25-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1446**

House Judiciary 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 \_\_\_\_\_ Seconded By \_\_\_\_\_

| Representatives               | Yes | No | Representatives   | Yes | No |
|-------------------------------|-----|----|-------------------|-----|----|
| Chairman Kim Koppelman        | /   |    | Rep. Lois Delmore | /   |    |
| Vice Chairman Lawrence Klemin | /   |    | Rep. Ben Hanson   |     | /  |
| Rep. Randy Boehning           | /   |    | Rep. Kathy Hogan  |     | /  |
| Rep. Roger Brabandt           | /   |    |                   |     |    |
| Rep. Karen Karls              | /   |    |                   |     |    |
| Rep. William Kretschmar       | /   |    |                   |     |    |
| Rep. Diane Larson             | /   |    |                   |     |    |
| Rep. Andrew Maragos           | /   |    |                   |     |    |
| Rep. Gary Paur                | /   |    |                   |     |    |
| Rep. Vicky Steiner            | /   |    |                   |     |    |
| Rep. Nathan Toman             |     | /  |                   |     |    |
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Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Paur

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

**REPORT OF STANDING COMMITTEE**

**HB 1446: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1446 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to United States constitutional conventions.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SCOPE OF UNITED STATES CONSTITUTIONAL CONVENTION.** The legislative management shall consider studying, during the 2013-14 interim, issues related to the calling of a convention under article V of the United States Constitution, including concerns associated with a "runaway" convention and methods through which states have addressed those concerns. The study must consider the impact of House Concurrent Resolution No. 3048 adopted by the sixty-second legislative assembly and similar actions taken by other states as well as other actions taken by states to reassert the constitutional authority of the states. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

**2013 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1446**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

HB 1446  
03/28/2013  
Job Number 20673

Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

A BILL for an Act to provide for a legislative management study relating to United States constitutional conventions.

## **Minutes:**

**Chairman Dever:** Opened the hearing on HB 1446.

**Prime sponsor was not available and the hearing will be recessed until prime sponsor can testify before the committee.**

**Chairman Dever:** Recessed the hearing on HB 1446.

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

HB 1446  
04/04/2013  
Job Number 20878

Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Dever:** Reopened the hearing on HB 1446.

**Representative Koppelman:** Testified as sponsor and to explain the bill. (Gives the historical background of the bill) The main concern is that there are those that are afraid of a constitutional convention because of a possible run-away convention. We were the first state to pass the Madison Amendment that began this journey and this bill only continues that journey.

**(8:50) Chairman Dever:** Closed the hearing on HB 1446.

**Committee Discussion:** The committee discussed that the bill is worded "shall consider studying" and there are implications with a constitutional convention and discussion probably should be had during the interim.

**Senator Cook: Moved a Do Pass.**

**Senator Poolman: Seconded.**

**A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.**

**Chairman Dever: Carrier.**

Date: 4/4

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1446

Senate Government and Veterans Affairs 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 Senator Cook Seconded By Senator Poolman

| Senators                    | Yes | No | Senator                    | Yes | No |
|-----------------------------|-----|----|----------------------------|-----|----|
| Chairman Dick Dever         | ✓   |    | Senator Carolyn Nelson     |     | ✓  |
| Vice Chairman Spencer Berry | ✓   |    | Senator Richard Marcellais |     | ✓  |
| Senator Dwight Cook         | ✓   |    |                            |     |    |
| Senator Donald Schaible     | ✓   |    |                            |     |    |
| Senator Nicole Poolman      | ✓   |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |
|                             |     |    |                            |     |    |

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Dever

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

**REPORT OF STANDING COMMITTEE**

**HB 1446, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).** Engrossed HB 1446 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**HB 1446**

2-20-13  
Rep Koppelman

Sixty-third  
Legislative Assembly  
of North Dakota

**CONCURRENT RESOLUTION NO.**

Introduced by

Representative K. Koppelman

1 A concurrent resolution to create and enact a new section to article IV of the Constitution of  
2 North Dakota, relating to consideration by the legislative assembly of amendments to the United  
3 States Constitution.

**STATEMENT OF INTENT**

4  
5 This measure would prohibit the legislative assembly from considering for ratification any  
6 amendment to the United States Constitution if the amendment was proposed by a  
7 constitutional convention that exceeded its scope of authority.

8 **BE IT RESOLVED BY THE** **OF NORTH DAKOTA, THE**  
9 **CONCURRING THEREIN:**

10 That the following proposed new section to article IV of the Constitution of North Dakota is  
11 agreed to and must be submitted to the qualified electors of North Dakota at the primary  
12 election to be held in 2014, in accordance with section 16 of article IV of the Constitution of  
13 North Dakota.

14 **SECTION 1.** A new section to article IV of the Constitution of North Dakota is created and  
15 enacted as follows:

16 The legislative assembly may not consider for ratification or ratify any amendment to the  
17 United States Constitution which has been proposed by a convention called under article 5 of  
18 the United States Constitution if the proposed amendment is beyond the scope of the  
19 convention as defined by the states that called for the convening of the convention.



# North Dakota House of Representatives

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0360

Representative  
Kim Koppelman  
District 13  
513 First Avenue NW  
West Fargo, ND 58078-1101

Residence: 701-282-9267  
Business: 701-492-7317  
Fax: 701-282-9267  
kkoppelman@nd.gov

Committees:  
Judiciary  
Political Subdivisions

2-20-13  
Rep. Koppelman 2

Judiciary Committee

Testimony HB 1446

Mr. Chairman and members of the Committee, House Bill 1446 is the second piece of a three-pronged effort to re-empower states and ensure that they have the authority that James Madison, the father of the United States Constitution, believed that that founding document already gave them.

We passed the first step in this three-step process last session, when we passed "The Madison Amendment", which is designed to ensure that states have the same authority that Congress has, to propose a single amendment to the Constitution.

HB 1446 and its companion measures are designed to prevent a "runaway convention", in the event that a Constitutional Convention is ever convened. They would insulate North Dakota from taking part in a runaway convention and, if a sufficient number of states enact similar measures, should a runaway convention ever occur, they'd prevent its product from ever becoming part of our United States Constitution.

Our Founding Fathers intended the states to have great influence in our Federal Republic. That's why George Mason insisted, at the Constitutional Convention, that the Constitution they crafted must be amendable, because it would doubtless prove flawed, and that there must be a way to amend without Congress' having a role, since congressional abuse of power might be the problem in need of remedy.

Today, those words are almost prophetic, yet we have been paralyzed by fear for generations and the right of the states, which the Founding Fathers built into the Constitution, has become virtually meaningless precisely because of that fear.

The result is not that the Constitution is never amended. To the contrary, when activist courts twist the meaning of the Constitution, in the modern age, their "opinions", in essence, amend the Constitution without actually doing so. This, coupled with Washington's endless thirst for power, has diminished the role of the states that our Founders intended.

One solution, to re-empower states, and restore Constitutional balance, I believe, is to put a firewall in place which prevents the fear of a runaway Constitutional Convention from ever becoming a reality.

I can't emphasize the point enough that this bill does not mean that a Constitutional Convention would ever be called and does nothing to make one more likely. In fact, one could argue that it may even make a convention less likely.

There is a reason why we've not had a constitutional convention since the first one. Throughout American history, whenever a critical mass of states have assembled, demanding that an amendment be enacted, Congress has simply proposed the amendment to the states for ratification, rather than risking a convention (Congress also does not want a constitutional convention, so it has always used this means to prevent one). That has been the course of American history and, I believe, it will continue to be.

The only difference is that, with these measures in place, if Congress failed to act to prevent a convention in these circumstances, it would not become a runaway convention, because the states would have prevented the possibility. If, for some unforeseen reason, despite all of this, a runaway convention did occur, the additional safeguards of constitutional amendments in the states preventing ratification of the result of such a travesty would further protect the integrity of the Constitution that we know and love.

Nothing currently in North Dakota law or in our Constitution prevents our state from being part of a runaway convention or taking part in ratifying its result. These measures offer that important protection!

House Bill 1446 and the Constitutional Amendment resolution introduced yesterday will jointly offer that protection.

The Bill prevents any North Dakota delegate to a Constitutional Convention from straying from the narrow purpose for which a Convention might be called and penalizes and replaces that delegate, should he or she violate their oath.

The Amendment would prevent our state from ratifying the result of a "runaway convention".

These two measures not only protect North Dakota, but if enacted by a minimum of 13 states will prevent a runaway convention and its resulting product, should one occur.

I respectfully urge a "Do Pass" recommendation on House Bill 1446.

1  
2-25-13  
Rep. K. Koppelman

Amendment to House Bill 1446

Page Two, Line Two, replace "Constitution of North Dakota" with "Constitution and laws of the state of North Dakota".

Page Three, Line One, after "felony.", "9. If the legislative assembly or an official designated by the legislative assembly determines that a majority of delegates to the convention are not bound by a provision similar to subsection 5 of this act, the legislative assembly or an official designated by the legislative assembly, if authorized to do so by the legislative assembly, may release a delegate from specific provisions of this act and notify the delegate of this action."

2-25-13 2

13.0790.01002  
Title.

Prepared by the Legislative Council staff for  
Representative K. Koppelman  
February 22, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1446

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study relating to United States constitutional conventions.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT STUDY - SCOPE OF UNITED STATES CONSTITUTIONAL CONVENTION.** The legislative management shall consider studying, during the 2013-14 interim, issues related to the calling of a convention under article V of the United States Constitution, including concerns associated with a "runaway" convention and methods through which states have addressed those concerns. The study must consider the impact of House Concurrent Resolution No. 3048 adopted by the sixty-second legislative assembly and similar actions taken by other states as well as other actions taken by states to reassert the constitutional authority of the states. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly