

**2013 HOUSE JUDICIARY**

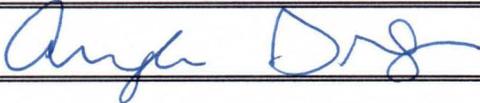
**HCR 3039**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HCR 3039  
February 25, 2013  
Job 19442

Conference Committee



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

Relating to consideration by the legislative assembly of amendments to the United States Constitution.

## Minutes:

*Attachment 1*

**Vice Chairman Klemin** opened the meeting.

**Rep Koppelman:** This measure is related to HB 1446 and the Madison Amendment that we passed two years ago. The purpose of this is to deal with the issue of a runaway convention. This says that if there ever were to be a runaway convention, ND would not be allowed to ratify those runaway pieces. If 13 states were to pass this resolution, it would prevent ratification. Congress can propose an amendment to the states and if three-fourths of the states ratify the amendment it becomes part of the Constitution. Or the states can try to amend the Constitution themselves by calling a convention, which everyone fears will turn into a runaway convention. When two-thirds of the states call for an amendment, either Congress can propose the amendment to avoid the risk of a convention or the states pull out to avoid a convention. Why not get rid of that fear? Everyone wants the states and the Congress to have a balance of power to amend the Constitution. If these are passed, the state's hand would be strengthened and Congress would be quicker to propose amendments. This is a three-part puzzle. First, the Madison Amendment clarified Article IV of the Constitution to ensure that it means that states have the authority to propose a single amendment and if they did call a convention, they could limit it to one item. Second, HB 1446 says that if there is a constitution convention and ND sends delegates, the delegates will limit their deliberation to the purpose for which the convention was called. Third, this resolution says if a constitutional convention happens and becomes a runaway convention, ND will not be a party to considering the runaway pieces and ratifying them.

**Rep Brabandt:** I assume there have been runaway conventions in the past?

**Rep Koppelman:** Some would argue the first constitutional convention was a runaway convention. It was convened to modify the Articles of Confederation. But there was not a Constitution yet.

**Rep Brabandt:** How many conventions have we had under Article IV?

**Rep Koppelman:** None.

**Rep Boehning:** What kind of time frame would there be to call a convention?

**Rep Koppelman:** I think if these provisions were on the books, in ND there would be very little fear in proposing an amendment. The amount of time would vary. These measures are not designed to call a convention; they're designed as protections should a convention ever occur and to empower states to propose an amendment without fear.

**Rep Paur:** In response to Rep Boehning, the 27<sup>th</sup> Amendment was proposed in 1789 and ratified 203 years later in 1992.

**Vice Chairman Klemin:** Who defines the scope of the convention? There will be situations where the scope isn't very narrow.

**Rep Koppelman:** The states will propose a specific amendment and call for a convention. The scope would be defined by that call.

**Vice Chairman Klemin:** What I mean is who in ND would decide that this proposed amendment is beyond the scope?

**Rep Koppelman:** I think most of the time it would be pretty clear. If the convention is called for reason x and it takes up item y, it is clear.

**Vice Chairman Klemin:** You need to have a determination made at some time that it is beyond the scope and that has to be made here before the legislative assembly can consider ratifying it. We're not allowed to consider it if it's beyond the scope, but don't we have to consider it to determine if it's beyond the scope?

**Rep Koppelman:** Maybe consider isn't the right word. But the idea is to take it up. We may need to clarify the word. The idea is that we couldn't take it up for ratification.

**Vice Chairman Klemin:** We should hand out the Madison Amendment (attachment 1). Can these three pieces, the Madison Amendment, HB 1446 and HCR 3039 each stand on their own? Do we need all three or does one of the three accomplish the goal?

**Rep Koppelman:** I believe all three are advisable. We could debate if all three are necessary, but it would create this firewall.

**Vice Chairman Klemin:** I have a concern about this type of amendment to the Constitution being understood by voters who would have to approve it. It's not a simple subject. Technically, if the voters don't understand it, they don't vote yes.

**Rep Koppelman:** That is a good point. The explanation that goes into the ballot could be that if there ever were a runaway convention, ND would not be able to ratify the results.

**Roman Buhler:** I want to emphasize the broad bipartisan nature of support for preventing a runaway convention and empowering states. The Madison Amendment was first proposed on a bipartisan basis. In regards to the time frame for ratification, it has been the practice in many proposed amendments to limit the time of ratification to 7 years. But the Supreme Court has held that if a proposed amendment does not contain a time limit, like the 27<sup>th</sup> Amendment, it remains active. In regards to the question of someone challenging the decision of the legislature on the scope, I think words don't cover every conceivable situation that's why we have judges. If there were a close question, it would be up to the legislature, judges and the people to decide. Ultimately, all of these decisions are up to the people of ND. There is an enormous amount of concern about what's happening in Washington. By voting for 3039, you are making a statement that states are giving themselves tools to change their relationship with Washington and to restore the balance of power.

**Rep Karls:** I received an e-mail from the balanced budget folks saying they really opposed this idea, making all kinds of accusations about the motives. Why would that be?

**Buhler:** I've worked closely with the balanced budget task force and they are absolutely in support of this legislation. I'm not familiar with the group that you spoke about. The opposition that I have heard has been people that don't want a convention, that believe there shouldn't be any action taken to propose a convention. My response has been that if there is ever a balanced budget, it will not be because a convention convenes and proposes it. It will be because people like you on a bipartisan basis draft one and Congress decides to adopt it to avoid a convention.

**Chairman Koppelman:** I just looked at that e-mail. Actually, it doesn't deal with these measures. It deals with SCR 4016 that would rescind all calls and that is the one they are opposed to.

**Rep Steiner:** Is this uniform language that other states are adopting or does each state have their own language? What was your reaction to the question about ratify or remove?

**Buhler:** There have been seven legislative counsels who have looked at this. There is no single set of language that appeals to everyone. Each legislative counsel and legislators in each state have their own ideas. But all of the proposed laws have four elements. First, they limit the authority of delegates. Then they require delegates to take an oath to accept the limits. They provide a mechanism for the replacement of delegates. Then they provide a mechanism for the punishment of delegates. As long as the laws contain those four elements, it works. In regards to 3039, you need to decide if you want the law to only cover situations where the legislature is ratifying or broaden the language so it would say that the state of ND shall not ratify an amendment outside the scope of the convention. Most states meet next year. Because you don't meet in even years, you're the first state to do the state constitutional amendment. Most other states are thinking of doing it in 2014.

**Rep Kretschmar:** The US Constitution says that the two ways to propose amendments are for Congress to do it or for two-thirds of the states. If the states do that, is it still up to Congress to call the convention?

**Buhler:** It is Congress that must call the convention. Congress cannot call the convention unless two-thirds of the states apply. One of the issues that have been raised questions the authority of Congress in this call. There is a lot of historic precedent for what happened before we adopted Article IV. This is a highly debated issue among legal scholars because it hasn't happened and we don't know exactly how the Supreme Court would rule. Some believe the role of Congress should be limited to setting the time and the place of the convention. Scholars also argue that Congress should leave the method of selecting delegates up to the states. Other scholars believe that Congress could assert its right to determine a formula for deciding how delegates are picked. Then the Supreme Court would have to decide.

**Rep Kretschmar:** How many other states have passed the Madison Amendment?

**Buhler:** North Dakota was the first. The resolution was introduced in a number of other states but legislators concluded that they did not want to use their Article IV power to propose an amendment because there weren't enough safeguards against a runaway convention.

**Rep Klemin:** Have any other states done this?

**Buhler:** That is correct. ND was the only state that proposed the Madison Amendment.

**Rep Klemin:** If two-thirds of the states propose an amendment and Congress must then call a convention, what make you think Congress will do that? I assume they have to vote to do that and there has been a lot of deadlock. Then who decides to call a convention, the Supreme Court?

**Buhler:** That is a very good unanswered question. Congress has a number of ways in which they can slow-walk a demand by two-thirds of the states to call a convention. The Supreme Court has ruled that Congress is required to call a convention, that it's not optional.

**Chairman Koppelman:** In the two years since we've passed the Madison Amendment, people have said that we need more safeguards on the state level. That is what HB 1446 and HCR 3039 are designed to do.

**Chairman** closed the hearing.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HCR 3039  
March 18, 2013  
Job 20104

Conference Committee

*Carson Heck*

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

Relating to consideration by the legislative assembly of amendments to the United States Constitution.

## Minutes:

Amendment 1

## Starts on minute 20:49 of recording 20104

**Chairman Kim Koppelman:** Opens HCR 3039 for committee work. The intent of it is if there is ever a Constitutional Convention that becomes a runaway convention that North Dakota would not ratify the product of a runaway convention. The amendment clarifies that and there is another addition to include in the amendment. On page 1 line 7 before the word Constitutional insert the word "runaway". The other changes recommended in the amendment is in the statement of intent after the word ratification insert the words "or permitting a process for ratification in North Dakota of". On line 16 after the word consider insert "ratify or permit a process" and removes "or ratify with "in North Dakota".

**Rep. Diane Larson:** Made a motion to move the amendment.

**Rep. Andy Maragos:** Second the motion.

Voice vote carried.

**Rep. Ben Hanson:** I understand this is restricting our delegation from going outside the intent of the Constitutional Convention?

**Chairman Kim Koppelman:** No, it says if there is a Constitutional Convention called and if it becomes a runaway convention and they send that product of the runaway convention to the states and North Dakota is going to put a firewall there and say we are not going to consider the runaway product of that convention.

**Rep. Ben Hanson:** So this would forbade the Legislature from agreeing with the runaway portion of a Constitutional Convention?

**Chairman Kim Koppelman:** Exactly.

**Vice Chairman Larry Klemin:** Mr. Buhler said North Dakota would be the first state to do this?

**Chairman Kim Koppelman:** It is being purposed in other states right now so it is an idea that is moving forward. I don't know if any of them have passed it yet.

**Vice Chairman Larry Klemin:** By the time anything like an Article 5 convention came up because it is going to take 34 states we would back here for another Legislative session and we would have time to look at this again before the public would have to vote on it. Why do we need to do this so far ahead?

**Chairman Kim Koppelman:** That was some of the discussion we had on the bill. I believe there are a couple of amendments out there that a couple of states like 32 calls for Article 5 conventions. If that is true and two more states issue the call then a convention would be called. Would it become a convention, would congress move a measure forward, we don't know that. History says congress moves something forward but we don't know.

Discussion was held.

**Rep. Gary Paur:** Made a do pass as amended motion.

**Rep. Vicky Steiner:** Second the motion.

Vote 8-5-1

**Chairman Kim Koppelman:** Will carry the bill to the floor.

**HCR 3039 ends at minute 40:37 on recording 20104**

YK  
3/18/13

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3039

Page 1, line 5, after "ratification" insert "or permitting a process for ratification in North Dakota of"

Page 1, line 6, after "a" insert ""runaway""

Page 1, line 16, after "consider" insert ", ratify, or permit a process"

Page 1, line 16, replace "or ratify" with "in North Dakota of"

Renumber accordingly

Date: 3-18-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3039

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. Larson Seconded By Rep. Maragos

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					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Voice Vote - Carried*

Date: 3-18-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HCR 3039**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.3053.01002

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

Motion Made By Rep. Paur Seconded By Rep. Steiner

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	/				

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Koppelman

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

**REPORT OF STANDING COMMITTEE**

**HCR 3039: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HCR 3039 was placed on the Sixth order on the calendar.

Page 1, line 5, after "ratification" insert "or permitting a process for ratification in North Dakota of"

Page 1, line 6, after "a" insert ""runaway""

Page 1, line 16, after "consider" insert ", ratify, or permit a process"

Page 1, line 16, replace "or ratify" with "in North Dakota of"

Renumber accordingly

**2013 SENATE JUDICIARY**

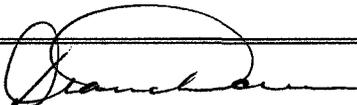
**HCR 3039**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HCR3039  
4/1/2013  
Job #20719

Conference Committee

Committee Clerk Signature 

**Minutes:**

**Relating to consideration by the legislative assembly of amendments to the US Constitution**

**Senator David Hogue**

Senator Hogue opens the hearing on HCR 3039. He explains that Rep. Koppleman could not be there at this time.

In support - none  
Opposition - none  
Neutral - none

Close the hearing on HCR3039

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HCR3039  
4/2/2013  
Job #20787

Conference Committee

Committee Clerk Signature



**Minutes:**

**Senator David Hogue - Chairman**

## Committee work

Senator Hogue allows Representative K. Koppelman to give his testimony.

Representative K. Koppelman - District 13 - Explains the resolution and describes a run-away convention. Senator Armstrong asks him what the math is to which Rep. Koppelman explains that it takes 2/3 of the States to call the convention and 3/4 to ratify the results or 38 States. He goes on to say if 13 States had a resolution like this it would render ineffective any run-away convention. Senator Sitte says it is 32 States that have called for a new constitutional convention. Senator Hogue asks Rep. Koppelman if the States can limit what they can and cannot consider in an Article 5 constitution through amendment through their State constitution. Rep. Koppelman replies this would not limit what the convention could do, this would limit what the States could ratify as a result of the convention. Senator Sitte states that most everything is ultimately going to be determined by the Supreme Court. Rep. Koppelman explains the process for amending the Constitution and that it is cumbersome.

Roman Buhler - On behalf of himself - Resident from Virginia - Mr. Buhler speaks of the enormous concern with what is going on in the country today. He explains in his view calling a convention to draft any kind of amendment is not a wise idea. He goes on to explain the ratifying process and how it is to protect the small States by requiring that 3/4 of the States ratify an amendment to the Constitution. He says this bill sets up a firewall. Senator Sitte asks if the convention could vote to suspend the rules as soon as it convenes. Mr. Buhler explains the actions a convention could do.

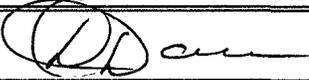
Committee breaks

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HCR3039  
4/2/2013  
Job #20785

Conference Committee

Committee Clerk Signature 

**Minutes:**

Vote

**Senator David Hogue - Chairman**

Committee work

Senator Hogue asks the committee how many Article 5 conventions has there been in the history of the country.

Senator Nelson moves a do not pass  
Senator Grabinger seconded

Vote - 5 yes, 2 no  
Motion passes

Senator Grabinger will carry

Date: 4-2-13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 3039

Senate 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 S. Nelson Seconded By S. Grabinger

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry		X			
Senator Kelly Armstrong		X			

Total (Yes) 5 No 2

Absent \_\_\_\_\_

Floor Assignment S. Grabinger

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

**REPORT OF STANDING COMMITTEE**

**HCR 3039, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends  
DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).**  
Engrossed HCR 3039 was placed on the Fourteenth order on the calendar.

**2013 TESTIMONY**

**HCR 3039**

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE CONCURRENT RESOLUTION NO. 3048  
(Representatives Thoreson, Boehning, Hatlestad, Koppelman, Schatz)

A concurrent resolution urging Congress to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to avoid a "runaway convention".

**WHEREAS**, experience has shown that the safeguards in the United States Constitution, as currently interpreted, may not be sufficiently clear to limit a Constitutional Convention to the specific subject for which that convention was called and thereby avoid a "runaway convention" where other matters may be considered; and

**WHEREAS**, James Madison, who is known as the "Father of the Constitution", believed that Article V of the Constitution gave and should give this protection; and

**WHEREAS**, those who framed and adopted the Constitution included a provision by which state legislatures may require Congress to call a convention for proposing amendments as a way to amend the United States Constitution; and

**WHEREAS**, the North Dakota Legislative Assembly accordingly makes application to Congress for the calling of a convention for proposing an amendment to the Constitution imposing certain rules of fiscal discipline, providing for legislative transparency, and preventing unfunded mandates by the federal government;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

**BE IT FURTHER RESOLVED**, that the North Dakota Legislative Assembly makes the following application:

Section 1. The North Dakota legislative assembly makes an application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call an Article V Amendment Convention for the sole purpose of voting to propose or voting not to propose the following specific amendment to the Constitution of the United States:

"Article \_\_\_\_\_. The Congress, on Application of the Legislatures of two-thirds of the several States, which all contain an identical Amendment, shall call a Convention solely to decide whether to propose that specific Amendment to the States, which if proposed shall be valid to all intents and purposes as part of the Constitution when ratified pursuant to Article V."

Section 2. For the purpose of determining whether the required two-thirds of the legislatures of the several states have applied for a convention, this application may be counted and considered valid only in conjunction with qualifying applications of other states that contain the identical text of the specific amendment contained in this application and whose application requires that the sole purpose of the convention is to decide whether to propose, or not to propose this specific amendment.

Section 3. This concurrent resolution is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used to conduct a convention that votes to propose any amendment other than the specific text of the amendment contained in Section 1.

Section 4. Each delegate selected to represent North Dakota at a convention that Congress calls under this resolution shall take an oath, enforceable under this state's law, to abide by and act according to the limits imposed by this resolution on the purpose of the convention.

## H. C. R. NO. 3048 - PAGE 2

Section 5. Any delegate selected to represent North Dakota at a convention that Congress calls under this resolution does not have authority to consider or approve any other amendment but the one contained in this application. Any vote taken in violation of this limitation is null and void, and any delegate who so votes does not have any authority to represent this state on any matter at the convention.

Section 6. This application is valid if two-thirds of the states make a qualifying application within seven years of its referral for ratification to the states by Congress under the provisions of Article V.

Section 7. This application is null and void if Congress, within 90 days of receipt of qualifying applications from two-thirds of the states, proposes and refers the ratification by the several states under the procedures outlined in Article V of the Constitution, the same exact text of the amendment contained in this application.

Section 8. That the secretary of state forward copies of this application within 30 days of its passage to the Speaker of the United States House of Representatives, the Clerk of the United States House of Representatives, the President of the United States Senate, the Secretary of the United States Senate, every member of the North Dakota Congressional Delegation, and the presiding officers of each house of the legislatures of the several states.

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3039

Page 1, line 5, after "ratification" insert "or permitting a process for ratification in North Dakota of"

Page 1, line 6, after "a" insert "'runaway'"

Page 1, line 16, after "consider" insert ", ratify, or permit a process"

Page 1, line 16, replace "or ratify" with "in North Dakota of"

Renumber accordingly

*Page 1 Line 7 before CONSTITUTIONAL  
insert "runaway"*