

2015 HOUSE JUDICIARY

HCR 3035

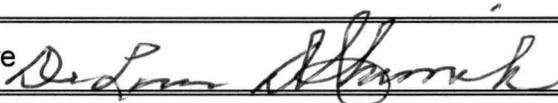
2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HCR 3035
3/4/2015
24337

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the qualifications of office for elected and appointed offices of the legislative, executive, and judicial branches of government; and to provide an effective date.

Minutes:

Testimony #1, Proposed amendment #2

Chairman K. Koppelman: Opened the hearing with testimony in support.

Rep. Rick Becker, District 7: Introduced the bill. He went through the bill. (1:41-4:15)

Rep. K. Wallman: You are aware of the code 16.1-01-09 Section 2; to be a qualified elector one must only be a ND resident for 30 days so if the constitution changes for legislators if the good people of ND would have to change the constitution it would have to be changed in code?

Rep. Becker: I think it would be dealt with in the same manner as other areas of the constitution where for the executive branch; being a resident of the state in order to qualify for appointment or election to the office is different than being a qualified elector.

Rep. K. Wallman: Section 5 on page 1 during the six months before the election or appointment and during the entire term for which the member was elected or appointed, a qualified elector in the district from which the member was elected or appointed must be a resident of the state. If we change this to six months we have to change it in the code from 30 days; if I am not misunderstanding you?

Rep. Becker: The way I read it you must be a qualified elector and reside in the state for six months.

Chairman K. Koppelman: Anytime the constitution conflicts with the century code the constitution would govern. If this resolution were to pass and the people were to approve it that we would be back next session bridging the code to align with the constitution.

Rep. D. Larson: Looking at this it says if the residence occupied by the member becomes uninhabitable; so in 2011 we were flooded and evacuated from our home. Is that what that

is referring too? We did find another home to live in within our district, but if we hadn't been able to find out temporary housing for the 18 months would that have then made me not eligible to be representing that district?

Rep. Becker: The uninhabitable exemption with the bill would take care of that.

Rep. Mary Johnson: I am not in favor of changing the century code. Can you pin point a problem this is addressing?

Rep. Becker: There have been past several legislators who represented a district in which they no longer live.

Rep. L. Klemin: I get that part and it makes sense to me. I am not sure about the six months? What would be the reason for this?

Rep. Becker: My understanding of why that is in here is to offer legacy to a person who is intending to represent a district. Personally I don't have much heartache if that was in or removed, but I am trying to relay what I believe that was the intention of that aspect of the bill.

Chairman K. Koppelman: Generally when constitutional changes are made the theory is that the constitution would be general and statues should be specific. This issue of uninhabitable residence etc. it is pretty specific and it is also open ended with regard to the length of time. Since legislative terms are four year terms someone who did not want to live where they lived or in the home they lived in all of a sudden the roof leaked and they decided not to fix the roof that could be deemed uninhabitable. There is no definition in the constitution or would there be. So two months in their term they could move to somewhere else and continue representing their district for the rest of that four year term. On one hand we say you have to live there six months in advance of becoming a legislator there, but if your home is uninhabitable we are just saying that is your get out of jail free card and you can go wherever you want to go. Do you see an issue with that?

Rep. Becker: Is it really tidy to say uninhabitable and leave it at that? If we are to say the constitutional intent is that the legislature should live in their district. It might be a problem of how much language do you want to put in there to address everything?

Chairman K. Koppelman: Maybe saying if a domicile become uninhabitable this requirement may be waived for a reason period of time as prescribed by law or something like that. Then it is up to the legislature to work out those details which is more typical of constitutional language.

Rep. Becker: I think that would be very reasonable.

Rep. L. Klemin: Section 3 questions. Do justices and judges have to be licensed to practice law now? So that is putting this into the constitution. On page 2, lines 24-28 where the district court must be a qualified elector of the judicial district for which the judge is appointed or elected and sometimes the Supreme Court moves judges around and would this preclude that?

Rep. Becker: That is a good question to which I don't have an answer.

Opposition:

Dale Sandstorm, Justice of the Supreme Court: (See testimony#1)(proposed amendment #2)(15:20-21:51) The governor should have the opportunity to appoint whoever he thinks is best qualified and electives should have the opportunity to choose whoever they think is best qualified to do it and this language in Section 3 of this amendment would preclude those types of things so we would urge you if you are going to go forward with it you adopt the amendment that we have put forward.

Chairman K. Koppelman: The issue of where judges are chambered does come up. Could you address that?

Dale Sandstorm: About twenty years ago when we combined the county and district judges into all being district judges with the same jurisdiction the legislature also adopted a bill at that time that provided that judges had to live in the county in which they were chambered. The legislature changed it to having to live in the district where their chamber is located. That was proposed by a judge who use to be a county judge and had dual chambers in Langdon and Cavalier and he didn't want to have to pick one of those over the other and he couldn't possibly be living simultaneously in both places and I think that was his proposal. A lawyer from Bismarck ran for a judgeship in Washburn making very clear he was going to continue to live in Bismarck and the voters voted to do that.

Chairman K. Koppelman: Several years ago we changed the law that said a state's attorney had to reside in the county where they are states attorney because we discovered that there were some counties in ND that had no attorneys living in them.

Neutral: None

Hearing closed.

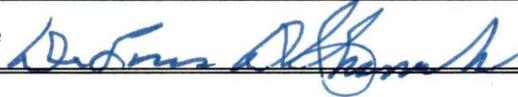
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Judiciary Committee
Prairie Room, State Capitol

HCR 3035
3/11/2015
24659

- Subcommittee
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Minutes:

Chairman K. Koppelman: reopened the meeting on HCR 3035.

Rep. Lois Delmore: The intent of this was very good. I think legislatures should live in the district where they live. Whoever the ramifications that were pointed out with justices and so on we probably should have stopped while we were ahead. Whether people want to amend this or not but in its form right now I can't support it.

Rep. L. Klemin: the only really good part about this is what Rep. Lois Delmore just said. There is another resolution that is in progress that I understand relates only to that issue.

Do Not Pass Motion Made by Rep. Lois Delmore: Seconded by Rep. K. Hawken:

Discussion: None

Roll Call Vote: 11 Yes 1 No 1 Absent Carrier: Rep. K. Hawken:

Date: 3-11-15
 Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3035

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. Delmore Seconded By Rep. Hawken

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt		✓	Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	—				
Rep. Paur	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Hawken

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

REPORT OF STANDING COMMITTEE

HCR 3035: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO NOT PASS (11 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HCR 3035 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

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**House Concurrent Resolution 3035
House Judiciary Committee
Testimony of Justice Dale Sandstrom
March 4, 2015**

Mr. Chairman and members of the committee, I'm Dale Sandstrom, a Justice of the Supreme Court. I'm here in my capacity as chair of the committee on legislation of the North Dakota Judicial Conference. The Judicial Conference is a statutory body which includes all Supreme Court Justices, all District Judges, all Surrogate Judges, the Attorney General, the Dean of the Law School, the Clerk of the Supreme Court, two Municipal Judges, and five members of the bar engaged in the practice of law. One responsibility of the Judicial Conference is to review proposed legislation which may affect the operation of the judicial branch.

The Judicial Conference takes no position on House Concurrent Resolution 3035 as far as it relates to the legislative and executive branches.

We oppose the proposed constitutional changes relating to the judicial branch as found in section 3.

We think the problems we see with the proposed constitutional changes relating to the judicial branch are all unintended consequences. But they are significant and would impair the ability of Governors and the electorate to select the best individuals as judges, and would impair the ability of the Supreme Court to meet the changing workload needs of the state.

It is important to note that although district judges are elected from districts, they are not "representatives" in the sense that legislators are representatives.

We are not aware of any problems with the current system of qualifications for judgeships. As far we can tell, this is a solution for which there is no known problem.

Governors have concluded that the best person to appoint to various judgeships did not at the time live in the judicial district. For example, Gov. Hoeven decided the best person to appoint to a district judgeship located in Bottineau was Michael Sturdevant, a Minot lawyer living in the neighboring judicial district. He also decided the best candidate for the district judgeship at New Rockford was Grand Forks lawyer James Hovey. And he decided to appoint as a district judge in Fargo, Lisa McEvers who was working and voting in Bismarck at the time. I also remember that Gov. Link decided the best person to appoint to a district judgeship in Grand Forks was a law school classmate of mine, Joel Medd, who was, as I recall, a County Judge at Minnewauken at the time.

We have also had North Dakota natives who had military careers (and may have been voting out of state) return to their home state and become judges within five years. Grand Forks based District Judge Lawrence Jahnke had a distinguished 20-year Air Force career before he returned to his home state to practice law. He had been back only three years when Gov. Sinner decided he was the best person to fill a vacant Grand Forks judgeship.

All of these distinguished judges and others could have been blocked by the provisions of this proposed constitutional changes.

North Dakota native Keith Nelson was the Judge Advocate General of the Air Force—the top lawyer in the entire Air Force—when he retired and returned to North Dakota, looking to continue his life of public service. We are fortunate that he took the position as the State Court Administrator, but he would have been blocked from serving as a district judge by this proposal.

There is an equally significant additional problem with this proposed amendment. The Supreme Court currently has the authority to move a judge to a different district if necessary to meet the public need. While I've been on the Supreme Court, with the judges' consent, we have moved judges because of changing workload and need. We relocated Judge Donald Jorgenson from Hettinger to the South Central District here. And we moved Judge William McLees from Watford City to Minot (which now are in different districts). Moves such as these would be prevented by the proposed constitutional amendment.

For judicial efficiency we have the authority to redistrict, but this ability would be impaired by this constitutional amendment.

We believe it is important both to maintain the flexibility to achieve judicial efficiency and, of course, to give Governors and the electorate the ability to select the persons they believe to be best qualified as judges.

Thank you.

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PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3035

Page 1, line 1, replace the first comma with "and"

Page 1, line 1, remove ", and"

Page 1, line 2, remove "section 10 of article VI"

Page 1, line 3, replace the first comma with "and"

Page 1, line 3, remove ", and judicial"

Page 1, line 6, replace the comma with "and"

Page 1, line 7, remove ", a justice of the supreme court, and a district court judge"

Page 1, line 12, replace the first comma with "and"

Page 1, line 12, remove ", and"

Page 1, line 13, remove "section 10 of article VI"

Page 2, remove lines 14 through 31

Page 3, remove lines 1 through 6

Re-number accordingly

(1)