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Loiseta Richard
Operator's Signature

10/16/03
Date

2003 JOINT CONSTITUTIONAL REVISION

HCR 3017

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Julia Costa Richardson
Operator's Signature

10/6/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3017

Joint Constitutional Revision Committee

Conference Committee

Hearing Date January 29, 2003

Tape Number	Side A	Side B	Meter #
1		X	3716-end
2	X		0-830

Committee Clerk Signature *Elizabeth R. Lewis*

Minutes: **Chair Kretschmar** Opened hearing on HCR 3017

Doug Bahr (Dir. of Civil Litigation-AG office): Opposed with written testimony.

Rep. Hawken: If something comes up in the administrative process, it can be appealed? Bahr said you can currently appeal. If the facts are the concern, it can be reversed.

Glen Baltrusch: Supports with written testimony. Offered amendments because the original draft is different is different than the bill language.

Christine Hogan: Opposed with written testimony.

Bruce Hicks (NDIC Oil and Gas Division): Opposed with written testimony.

DeNae Kautzman (Dept. of Human Services): Neutral with written testimony

David Thiele (WC Board of Directors): Reminded committee that this is not new legislation and that this was considered in the 56th Legislative Assembly.

Rep. Kretschmar: How many hearings per year does your agency hear? Thiele replied that they hear about 80-85 hearings per year.

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Joint Constitutional Revision Committee
Bill/Resolution Number 3017
Hearing Date January 29, 2003

Testimony handed out on behalf of Joe Ibach in opposition.

Chair Kretschmar closed hearing on HCR 3017.

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Yolanda Richardson
Operator's Signature

10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3017

Senate Joint Constitutional Revision Committee

Conference Committee

Hearing Date 02-05-03

Tape Number	Side A	Side B	Meter #
1	X		6060-end
		X	0-103
Committee Clerk Signature <i>Thomas A. Jandy</i>			

Minutes:

SENATOR TOLLEFSON opened discussion on HCR 3017.

REPRESENTATIVE WINRICH This same thing was introduced as a House Bill and it was recommended as a Do Not Pass.

Representative Maragos moved a DO NOT PASS. Seconded by Representative Winrich.

Roll Call Vote: 9 YES. 0 NO. 1 Absent.

Carrier: Representative Kretschmar.

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La Costa Richard
Operator's Signature

10/16/03
Date

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Date: 2/5/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House Joint Constitutional Revision Committee

Check here for Conference Committee

Legislative Council Amendment Number HCR 3017

Action Taken Do Not Pass

Motion Made By Rep. Maragos Seconded By Rep. Winrich

Representatives	Yes	No	Senators	Yes	No
Rep. Kretschmar, Co-Chair	✓		Sen. Tollefson, Co-Chair	✓	
Rep. Maragos	✓		Sen. Mutch	✓	
Rep. Hawkin	✓		Sen. Kresbach	Absent	
Rep. Eckre	✓		Sen. Nichols	✓	
Rep. Winrich	✓		Sen. Seymour	✓	

Both sides (House and Senate) did Standing Committee Report. Argued would not allow me to do this. ADP

Total (Yes) 9 No 0

Absent 1

Floor Assignment (House) Rep. Kretschmar (Senate) Senator Nichols

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

Salvatore Riccardi 10/10/03
Operator's signature Date

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 11:32 a.m.

REPORT OF STANDING COMMITTEE
Module No: HR-23-1821
Carrier: Kretschmar
Insert LC: . Title: .
HCR 3017: Joint Constitutional Revision Committee (Rep. Kretschmar, Chairman)
recommends DO NOT PASS (9 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HCR 3017 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-23-1821

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Richard
Operator's Signature

10/16/03

2003 TESTIMONY

HCR 3017

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

FR

TESTIMONY BEFORE THE HOUSE
JOINT CONSTITUTIONAL REVISION COMMITTEE
IN OPPOSITION TO HOUSE CONCURRENT RESOLUTION 3017

Douglas A. Bahr
Director, Civil Litigation Division
Office of Attorney General

January 29, 2003

My name is Doug Bahr. I am the Director of the Civil Litigation Division of the Office of Attorney General. I am appearing today on behalf of Attorney General Wayne Stenehjem in opposition to House Concurrent Resolution No. 3017.

The proposed amendment to Article 1, Section 9 of the North Dakota Constitution appears (1) to permit a person or entity to challenge a governmental determination at district court without participating in any administrative process, and (2) to provide that a person who elects to participate in an administrative process may seek a de novo judicial review by trial by jury.

HCR 3017 IS VERY BROAD

The State and its political subdivisions are involved in numerous governmental decisions that arguably impact a person's activities or property. In addition to formal adjudicative decisions made under N.D.C.C. ch. 28-32, governmental entities make decisions regarding personnel matters (hiring, promotions, firing), awarding bids and entering contracts, transferring and disciplining inmates, revoking or denying hunting and fishing licenses, etc. Although unclear, HCR 3017 could arguably apply to all such determinations.

ELIMINATION OF THE ADMINISTRATIVE PROCESS

A constitutional amendment to permit a person to seek judicial review of a governmental determination without participating in the administrative process would drastically change current law, have unintended far reaching effects, and create numerous practical and financial concerns.

First, from a practical standpoint, under most circumstances the government does not and cannot make a determination until completion of the administrative process. It is through the administrative process that a government entity obtains the necessary information to make a determination. In other words, absent participation in the administrative process, there is no governmental determination. Permitting a person to seek judicial review of a governmental determination without an administrative process places the cart before the horse.

Second, eliminating the administrative process will place every governmental determination in the judicial arena. It will convert every administrative decision into a civil action. Requiring the courts to try every governmental determination will impose an unbearable burden on an already overburdened judiciary, prolong resolution of governmental determinations, and impose additional financial burdens on North Dakota taxpayers.

