

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

3055

2005 HOUSE CONSTITUTIONAL REVISION

HCR 3055

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR3055

Constitutional Revision

Conference Committee

Hearing Date 2-25-05

Tape Number	Side A	Side B	Meter #
1	x		1.1 --- end
1		x	0 --- 6.8
Committee Clerk Signature <i>Maria Dean</i>			

Minutes:

Chairman Koppelman: (1.1) opened the hearing on HCR3055

Rep Johnson: (1.7) appeared in support of HCR3055. (see attached testimony)

Chairman Koppelman: (4.6) I believe this measure was defeated by the voters last yr because it was complex & they didn't understand it; how can we avoid that this time?

Rep Johnson: What we're hoping is to have a lot more information available to the public beforehand. Al Jaeger, the Sec of State, got a larger group of people to look at it so there's broader group of people that know about it & can talk to their constituents groups about what's going on.

Al Jaeger, Sec of State: (5.4) appeared in support of HCR3055. (see attached testimony)

All of the provisions that exist in ND law in order to get permits, etc, need to start at the Sec of State's Ofc, so it's really an economic issue. The provisions dealing with corporations are not conducive for certain corporations to be here. There was a comparison between Delaware & ND

& everything is pretty much the same, except there's a culture in the judicial system in Delaware which is conducive to corporations. Our Constitution has a restriction that no other states have. The amendments we're requesting, actually allow the corporation themselves to determine their structure. I believe with proper education, it will work better this time.

Rep Kretschmar: (16.8) Do you think in 2003, that it made a difference that it was on the primary ballot instead of the general?

Jaeger: The committee will need to decide. The placement on the ballot is determined by the order that they were passed, so if this one were passed 1st, it would become Measure #1 on the ballot, and so on.

Rep Conrad: (18.3) Why didn't you ask the co-ops to be a part of this process.

Jaeger: We have & we know from last time & they didn't have a problem with it. We want this to be non partisan, broad based; this is not a political or a geographical issue, it's a state issue to foster business developments to ND.

Rep Kasper: (20.5) In your experience, which is the best place to be on the ballot to get the Constitution amendment passed; 1, 2, 3 or 4?

Jaeger: I really don't think it makes a difference, because what you do is promote the number.

Rep Klemm: ((20.9) We have 11 different sections that are proposed to be repealed & the rationale for doing them is because it's obsolete or superseded by a federal law or it's covered in the statues in the ND Century Code in more detail. Wouldn't it make it easier to leave the ones in there that don't hurt anything, rather than having to explain why we're repealing 11 of these?

Jaeger: I've thought of that also & my personal feelings are that a broader, rather than a narrow approach would be better because in a general category pertaining to RR's, Banking or what have

you, so although the number is large, the topic is not. I think, if we approach the voters saying; this was appropriate in 1889, but in 2005 some changes need to be made. This is to clean up & foster business development.

Rep Klemin: (23.2) There's a lot of repetition in the ND Constitution that's the same as the Federal Constitution; we could condense the ND Constitution to a few pages if took out everything that was covered by somewhere else.

Jaeger: We have to look at this as a bigger picture, that's what's important is there are some important rights being retained in Article 12 as well. I don't want to 2nd guess the voters.

Rep Sandvig: (24.3) Is this in any way paving the way for corporate farming to come in the state?

Jaeger: ND Century Code already covers everything, so there's nothing in there that deals at all with that, there's nothing there that would change anything.

Rep Keiser, Dist 47: (25.2) appeared in support of HCR3055. As chairman of the Industry, Business & Labor Committee at the legislature, we are constantly working at ways to improve the business climate to create jobs to keep young people in our state. There's nothing we can do relative to the corporate infrastructure that can better improve the corporate climate in this state then what the Sec of State is proposing in this legislation. As a business owner in the state, I can only share with you, when we as legislators, talk about good, quality, high paying jobs for young people, they come out of those firms which are incorporated & whose headquarters are in this state. In my industry, those firms whose headquarters are outside of the state, tend to buy their printing outside of the state. Likewise, the firms whose headquarters are located in the state tend more often to buy their printing, legal services, accounting services & all of the other services

offered from the location of their corporate headquarters ... it only makes sense. In my experience in ND, the complexity of the measure has never been the issue, the quality of the measure has always been the critical element & the support. I think the legislature has been much more aware & has a better understanding of this issue & will do a better job with their constituents when this is on the ballot than we did last time. The business community recognizes the value & they're prepared to launch whatever is required to make sure that this measure is understood by the voters.

Rep Klemin: (28.5) There are some that feel that the Constitution is the supreme law of the land, in this case, the supreme law of ND, & that the statutes we have in the ND century code are a derivative of the Constitution & implement the Constitution, etc. How would you respond to the argument; if it's in the Constitution, why do you put it in the statutes?

Rep Keiser: Again, I will defer you to the Sec of State, but I would argue that if there is federal law that is pre-empting our statutes then I'd turn the question around to say, what value is it to have included in our Constitution something which is pre-empted by federal law? We should take that very seriously.

Rep Klemin: In Mr Jaeger's explanation, it indicates the reason we're taking them out is because they're covered in the statutes & that seems to say, you just said it, you're covered in the Constitution & they have statutes & we should leave it in the Constitution, but we're not proposing to do that & in quite a few sections we're going to take them out because they're covered in the statutes.

Rep Keiser: That's exactly why we have this committee.

Chairman Koppelman: (30.9) It seems to me that in the business world & economic development world, frequently perception is reality & for some reason, in some circles, our state has not had a positive image as a pro business state, & I believe we are. Do you think this will change that & what else can we do?

Rep Keiser: I can't answer if that position will change dramatically with the passage of this bill, what I can suggest to you very strongly, without the passage of this bill, we will be (we are) one of the most restrictive states in terms of incorporation & will continue to support a position that our state is not a good state to open & incorporate in. That's not a position that's acceptable to me as a legislator.

Rep Conrad: (32.5) We're restricted because we say this is how we want to structure your company?

Rep Keiser: Absolutely. It's always an interesting challenge when we play with other people's money or we play with my money or your money.

Al Jaeger: I wanted to let you know that Ed Schafer wanted to be here today, but received a call about a family situation & he needed to follow up. He was prepared to testify.

Kelvin L. Hullet, President of Bis-Man Chamber of Commerce: (34.0) appeared in support of HCR3055. (see attached testimony)

Rep Meier: (36.6) Have you experienced any business wanting to come into the state that haven't because of these restrictions?

Hullet: No, I think the only one who has brought this forward is Extend America & that's what really brought it to light. One thing I think should be noted in Sect 6 is what's been introduced as

far as the revision, is not that it will eliminate cumulative voting, what it does is allow corporations, if they want to set it up differently, they have the opportunity to do that.

Rep Klemin: (38.2) Regarding Sect 9, of Article X11. What's wrong with that?

Hullet: I'd have to check with the Sec of State if you think Sect 9 should be retained.

Jaeger: I'll have to dig back, we did have that 2 yrs ago & there was a reason why that section was being amended, now maybe it doesn't need to be taken off.

Chairman Koppelman: (39.9) Is the wording of the measure identical to last session's measure # 1 or has it changed?

Jaeger: There's been some changes made, particularly the cumulative voting. None of that is taken out or changed, it just makes it clear that the corporation has the choice.

Rep Klemin: Regarding Section 7 of Article X11, if we take that out, that would authorize the legislature to change that & say corporations don't need a registry? Is that good policy to give the legislature the ability to say that foreign corporations don't have to have to anyone to look through it to see if there's a problem?

Jaeger: There are some questions, but what this will do is allow you, as a legislator, to react a little quicker. Ultimately, the committee will be making that decision, that's why it's here. Another question that has come up is; would it be easier to take just a specific section, or would it be easier to take the big revision? In my mind it will be easier to take the big revision, whatever section you decide.

Rep Sandvig: (44.2) How would this resolution effect rural electric coops, if at all?

Hullet: Not at all.

Rep Conrad: Regarding Sect 17 & the "black list", why do we need to take it out? Also, I feel that it's better to go with a very narrow Section or revision; it's easier to agree to.

Jaeger: Ultimately, you'll make that decision.

Chairman Koppelman: (47.1) I think we'll see things in our Constitution that are really more appropriately statutes & that's some of what we're hearing here.

David Straley, Greater ND Chamber of Commerce: appeared in support of HCR3055. (see attached testimony)

Chairman Koppelman: (50.1) From the testimony we've been hearing from the people who support this resolution, it could be paraphrased by saying, the Constitution shouldn't major on the minors, it sounds like we're micro managing our Constitution. My question is, do you know of any other state that sets up, in it's Constitution, how corporations should be done?

Jaeger: (50.8) Our committee obtained Constitutions from a number of other states & most other state Constitutions don't even refer to corporations & yet we don't know of a state that doesn't require a certificate of authority for a foreign corporation, so I think I'm hearing alarm about things that are taking place in 49 other states that are governing it, but we have a restriction in our Constitution that doesn't make it conducive for them to incorporate here. We have examples of companies that are here, but have incorporated in other states. Ed Schafer is the only one who has come forth to say, "I want to incorporate here, but this is a problem."

Chairman Koppelman: One of the things we spend a lot of time talking about in the legislature is creating jobs through economic development. I'm assuming that companies will do business here, they just want incorporate here. Wouldn't it be more advantageous to ND, rather than the 100's of fast food places & the jobs that they create, to have the headquarters of one of those

companies here & all the corp level management jobs & the higher pd positions that that would create?

Jaeger: Perception has been mentioned earlier. Right away, the attorneys for Extend America said, incorporate in Delaware & it was only through the persistence of 1 individual that they're here.

Rep Klemin: (54.8) I don't believe anyone's disputing the provisions about cumulative voting & __?__ rights, which was the essence of the previous measure & that would be carried forward unto this. The concerns are being raised about all the other things that are being thrown in & maybe an argument could be made that if you put enough stuff in here *end of side A ... missed some.*

Jaeger: (.0 Side B) I hear from your concerns, you want it passed. I'm hearing from you a strategy, what is the best & essentially when the final draft came & the attorneys that were involved with us, they looked at this & thought, "is this really necessary?". So I don't think the final result was based on strategy as it was on other things. We have someone here from the PSC Co who will address the RR part.

Rep Conrad: Is Sect 6 the bottom line, that's what you really want to get through & the rest is more or less a housekeeping issue?

Jaeger: Yes, Sect 6 & 9

William Binek, Chief Counsel, PSC: I am neutral on this resolution but because RR was mentioned I thought I'd offer my input. In reviewing the provision, specifically relating to RR corporations, in Article X11, & I consequently reviewed Sect 7, which is on RR section, & also 10, 11, 12 & 14. I note that HCR3055 contains no proposal to change Sect 10, so I will not comment on that Sect. Most regulatory jurisdiction over RR's is __?__ with the federal __?__

transportation board & the RR authority. ND law provides the commission with specific regulatory powers to the extent that the powers are not inconsistent with federal law. Relating to Sect 7, I commented on that because I feel that it is important that corporations have authority to operate in the state & have a registered agent & from the attorney's perspective, whether it's in state law or in the Constitution, I don't take position on that. The provision Constitution that requires them to have a place of business is what concerned me & I don't think that that's necessary. Sect 11, my comments on that is that s RR corporation organized & doing business in ND is required to comply with existing ND corporate law. The provisions in Sect 11 requiring reports that are unnecessary because all corporations are required to file ? state law & also ND Century Code, Sect 49 01.1 03, Sub Sect 2 authorizes the commission to require RR's to file report & data necessary to carry out the commission's regulatory function. The provisions in Sect 12, I feel are unnecessary because Surface Transportation Board has jurisdiction over consolidation in their ? . The provisions in Sect 13, I believe are unnecessary because the only construction that will be made will be to existing line & is subject to Surface Transportation Board jurisdiction; however, under ND Century Code, Sect 49 10.101, the commission may regulate RR activities that constitute intra state commerce to the extent that such regulations are not inconsistent with federal law. All RR's are common carriers under ND Century Code Sect 49 10.102 & to the extent, not inconsistent with federal law, the commission has the authority to insure that rates, facilities & services are just & reasonable & not unduly discriminatory, prejudicial or preferential. Under ND Sect 49.10.1 14, the commission may adopt & enforce safety rules not inconsistent with any federal agency having jurisdiction over ? . I should note that under Century Code, the ND Public Svc Commission is also the state entity that has the

authority to represent state interest before the Surface Transportation Board. In this session, the Public Svc Commission is asking for money to be appropriated for the purpose of bringing a grain rail rate case against the RR before the Surface Trans Bd. Sect 14, I believe that those provisions are unnecessary because ND Century Code, Sect 49.10.1 03 authorize the commission to regulate RR in all matters effecting relations between RR's to the extent not inconsistent with federal law. In addition, Sect 49, 11 08 & 09 provide for crossing of 1 RR over another.

Rep Klemin: (5.5) Sect 12-14 must all deal with RR in some way; if those all stayed in the Constitution, what difference would it make?

Straley: From our standpoint, it wouldn't make any difference, that's why we're neutral.

Chairman Koppelman: (6.1) Do you feel that it would change anything with regards to RR's in the way they view or do business with our state?

Straley: The more you have on the books, the result of it hesitates relations between corporate entities in the state & personally, I don't think there's any good reason to have a lot of unnecessary things in either the Constitution or state law.

Chairman Koppelman: (6.8) If no further testimony in support or opposed, we'll close the hearing on HCR3055.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR3055

Constitutional Revision

Conference Committee

Hearing Date 2-28-05

Tape Number	Side A	Side B	Meter #
1	x		1.8 --- 4.8
Committee Clerk Signature <i>Diane Haan</i>			

Minutes:

Chairman Koppelman: called the committee work meeting for HCR3055 to order. We've got a subcommittee assigned. Rep Kretschmar was the chairman of that committee & will share what's been done.

Rep Kretschmar: (1.8) Rep Kasper & I got together re: HCR3055. I'm of the opinion that the resolution is in very good shape. I'd like to pass it as is. Much of the material that's being repealed is what, in this age, we'd consider statutory material that does not need to be in our Constitution & is covered by various state general statues. I went to the LC Library & got a copy of the proposed Constitution from 1972 to see what they'd say about corporations. The paragraph they had on it is as follows: "The Legislative Assembly shall provide, by general laws, for the organization of all corporations. No charter of incorporation shall be granted, modified or amended by special law, except in the case of municipal corporations or other corporations not at the control of the state." Basically, that Constitution left everything up to the legislature to

establish a statute. Rep Kasper & I feel that we should leave the resolution as is & pass it out of the House.

Chairman Koppelman: Is there discussion or is there a motion?

Rep Kretschmar moved a "Do Pass on HCR3055" Rep Kasper seconded it

Rep Conrad: I checked with the Farmers Union & the Rural Electric's & they had no problem with it.

Chairman Koppelman: (4.0) After thinking about our hearing last week, it occurs to me that many of these things are statutory, we might agree with them in the Constitution, but as someone said, maybe this was a good way for the Constitution at the time of statehood, but today, things have changed. It's also my understanding that if we adopt this resolution & the people pass it, our Constitution will say as much or more than some states about corporations than any other State Constitution, so I intend to support the motion.

Rep Klemin: (4.2) If it was up to me, I'd probably want to have something like Rep Kretschmar read, because really, they're all "C's" with the liability companies you can do just about everything & they're not covered in the Constitution at all. *(not sure I understood that correctly)* Even the stuff that's in here, you could get around most of it, but I guess this is what we've got.

Rep Kretschmar: (4.7) I'm happy with the proposed amendment as is & hopefully it will get to the ballot & get passed in next yrs election.

Vote on "Do Pass"

6 Yeas 0 Neas 1 Absent & not voting Carrier: Rep Koppelman

(Carrier was changed originally Rep Kretschmar was assigned to the bill)

Chairman Koppelman: Closed the Committee Meeting on HCR3055

Date: 2-28-05

Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3055

House CONSTITUTIONAL REVISION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken To Pass

Motion Made By Kretschmar Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chair Koppelman	✓		Rep. Conrad	✓	
Rep. Kretschmar, Vice Chair	✓		Rep. Sandvig	AB	
Rep. Kasper	✓				
Rep. Klemin	✓				
Rep L. Meier	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Koppelman

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

REPORT OF STANDING COMMITTEE (410)
March 1, 2005 4:28 p.m.

Module No: HR-37-3915
Carrier: Koppelman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3055: Constitutional Revision Committee (Rep. Koppelman, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HCR 3055 was placed on the Eleventh order on the calendar.

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HCR 3055

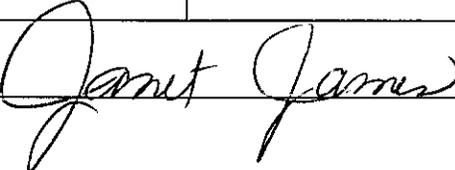
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3055

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 22, 2005

Tape Number	Side A	Side B	Meter #
1	X		60 - 2675
		X	320 - 400
Committee Clerk Signature 			

Minutes:

Senator Duane Mutch, Chairman of the Senate Industry, Business and Labor opened the hearing on HCR 3055 relating to regulation on business, railroad and banking corporations; and to provide an effective date.

All members of the committee were present.

Representative Nancy Johnson of District 37 testified in support of HCR 3055 (See attached testimony).

Alvin Jaeger, North Dakota Secretary of State testified in support of HCR 3055 (See attached testimony). He further asked the committee to wait to take action on HCR 3055 until the Internet gambling bill has been acted upon.

Senator David Nething asked if there is a reason why there can't only be talk of all business corporations and not separate out bank and railroad because they are also business corporations.

Alvin Jaeger understood his poin, but to put this on the ballot he needs to draft language that thoroughly and concisely explains what the particular measure will do. The Attorney General and he have to concur on that language.

Senator Mutch commented that article 6 and 9 that were on the ballot last time were the most important of the whole thing, but when this is put on the ballot, the people will repeal 7 or 8 sections of the constitution and that might put up a red flag.

Discussion was held to the confusion of articles and sections on the ballot.

Senator Jerry Klein stated that this is only a resolution and that the Secretary of State's Office crafts the language for the ballot and this is not the actual ballot proposed.

Alvin Jeager assured the committee the language would be worked on and that there is several years to do accomplish this. He admitted it will be a challenge to do this because he does want the article changed, yet present the ballot clearly and concisely to the voters.

Bill Sorenson testified in support of HCR 3055 on the behalf of the President of Extend America, Ed Schafer, stating the story of starting the company and the recommendation that the company become a Delaware corporation instead of North Dakota company.

Kelvin Hullet, President of the Bismarck-Mandan Chamber of Commerce testified in support of HCR 3055 (See attached testimony).

David Straley representing the Greater North Dakota Chamber of Commerce testified in support HCR 3055 (See attached testimony).

William Binek, Chief Council for the North Dakota Public Service Commission testified in a neutral position and for comment on HCR 3055 (See attached testimony).

Senator Klein asked for confirmation that the PSC is fine with the changes.

William Binek confirmed this to be accurate.

Senator Mutch asked for further testimony of HCR 3055 and hearing non closed the hearing on HC 3055.

Tape #1, Side B, 320 - 400

Senator Duane Mutch opened the committee work on HCR 3055.

Senator Jerry Klein stated that he has visited with the Secretary of State and he did not oppose the idea of removing banking and railroad from the bill.

Senator Duaine Espegard made a motion to amend HCR 3055 by removing "banking and railroad".

Senator Karen Krebsbach second the motion.

Roll call vote #1 to amend HCR 3055 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Espegard made a motion for a Do Pass as Amended of HCR 3055.

Senator Krebsbach second the motion.

Roll call vote #2 for a Do Pass as Amended of HCR 3055 was taken indicating 6 YEAS, 1 NAY, AND 0 ABSENT OR NOT VOTING.

Senator Krebsbach will carry HCR 3055.

March 22, 2005

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3055

PAGE 1, LINE 3, REMOVE THE FIRST "AND"
Page 1, line 4, remove ", railroad,"

Page 1, line 5, remove "and banking"

Page 1, line 8, remove ", railroad, and banking"

Re-number accordingly

REPORT OF STANDING COMMITTEE

HCR 3055: Industry, Business and Labor Committee (Sen. Mutch, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3055 was placed
on the Sixth order on the calendar.

Page 1, line 3, remove the first "and"

Page 1, line 4, remove ", railroad,"

Page 1, line 5, remove "and banking"

Page 1, line 8, remove ", railroad, and banking"

Renumber accordingly

2005 TESTIMONY

HCR 3055

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 23, 2005

TO: Rep. Koppelman, Chairman, and Members of the House Constitutional Revision Committee

FR: Al Jaeger, Secretary of State, Vice Chairman, Board of University and School Lands

RE: HCR 3055 – Amend Article XII of the North Dakota Constitution

Article XII of the Constitution has not been amended since it was first adopted in 1889.

In the fall of 2001, former Governor Ed Schafer informed me about a provision in Article XII, specifically Sections 6 and 9, that were a consideration of whether his company would incorporate in North Dakota. However, because of his loyalty to the state, Extend America, Inc. was and still is chartered as a North Dakota corporation.

During the 2003 Legislative Assembly, SCR 4013 was unanimously adopted and placed on the June 2003 ballot as Measure # 1. Unfortunately, the measure failed on a yes vote of 31,462 (42%) to a no vote of 44,039 (58%).

After the election, I contacted the North Dakota State Bar Association and asked if it would be possible to obtain their assistance in reviewing all of Article XII to determine if other changes were warranted in addition to Sections 6 and 9.

A small group was formed and the Secretary of State's office obtained the copies of the constitutions of other states so that they could be compared to North Dakota's. No other state had provisions similar to Sections 6 and 9.

Realizing the importance of amending Article XII, representatives of the business community became actively involved in the review and research.

The result of all of these efforts is the proposed amendment to Article XII as proposed in this resolution.

In addition to the input of the committee and not limited to the following, the draft of the resolution was reviewed by the following:

- Secretary of State
- Public Service Commission
- Attorney General
- North Dakota League of Cities
- North Dakota Association of Counties
- Bank of North Dakota
- North Dakota Farm Bureau
- Public Employees Association
- National Federation of Independent Business
- BNSF Railway – Attorneys

PROPOSED AMENDMENTS

Section 1: Amended in Section 1 of the resolution to make it clear that the term corporation does not include municipalities or political subdivisions.

Section 2: Amended in Section 2 of the resolution to clarify the text that corporations hold a charter subject to the constitution and the laws adopted by the Legislative Assembly.

Section 3: This section is repealed in Section 4 because it pertains to the beginning date for corporations conducting business prior to enactment of the constitution.

Section 4: This section is repealed in Section 4 because it is no longer applicable and the amended Section 2 would govern it.

Section 5: This section is not being amended or repealed because it pertains to the right of eminent domain.

Section 6: Amended in Section 3 of the resolution to make it clear that, unless the articles of incorporation provide a different method of governance, the existing provisions in Section 6 will apply.

Section 7: This section is repealed in Section 4 because this provision already exists in the Century Code and it would be regulated under the powers given to the legislature in the amended Section 2.

Section 8: This section is repealed in Section 4 because this provision already exists in the Century Code and it would be regulated under the powers given to the legislature in the amended Section 2.

Section 9: This section is repealed in Section 4 because this provision already exists in the Century Code and it would be regulated under the powers given to the legislature in the amended Section 2.

Section 10: This section is not being amended or repealed because it retains the rights of local authorities to be involved.

Section 11: This section is being repealed in Section 4 because N.D.C.C. § 49-01.103(2) authorizes the Public Service Commission to perform regulatory functions.

Section 12: This section is being repealed because a federal agency has exclusive jurisdiction over consolidations and mergers.

Section 13: This section is being repealed because a federal agency has jurisdiction and the Public Service Commission may regulate railroad activities that constitute "intrastate" commerce to the extent that such regulations are consistent with federal law.

Section 14: This section is being repealed because a federal agency has jurisdiction or authority is granted to the Public Service Commission in the Century Code.

Section 15: This section is being repealed because it is related to banking and no longer applicable. Proposal is to eliminate Section 15.

Section 16: This section is not amended or repealed because it pertains to consumer protection and price controlling.

Section 17: This section is being repealed because this activity is unlawful under Federal law.



**Testimony of David Straley
Greater North Dakota Chamber of Commerce
Presented to the
House Constitutional Revision Committee
February 25, 2005**

HCR 3055

Mr. Chairman and members of the House Constitutional Revision Committee, my name is David Straley. I am here today representing the Greater North Dakota Chamber of Commerce to urge your **support** of House Concurrent Resolution 3055.

The business community feels that the changes in this resolution are positive for North Dakota. As these provisions of the constitution may have been appropriate over a century ago, it is time to look at today's current environment and current needs of corporations to make an informed decision regarding Article XII. In addition to a cleanup of some the language, the sections being removed are no longer applicable or are being brought under the North Dakota Century Code.

Section 3 of the resolution is important because it removes a constitutional mandate. This change provides any corporation with the opportunity to set out the shareholder rights in the corporation's articles of incorporation. This change would allow the flexibility for the corporation to choose what they feel is best for them. We believe that this choice should be left to the corporation, limited by what they choose, not mandated by the constitution.

Please remember, this resolution does not eliminate cumulative voting, but allows the corporation to choose which method they would like for shareholder voting. It also provides a default, so that if any corporation is set up and its articles of incorporation are silent on this issue, then cumulative voting comes into effect.

If this resolution passes, the ND Chamber of Commerce will work to provide resources to educate the people of North Dakota. We will do this through our network of area Chambers of Commerce across the state. We will strive to alert people about what this change does, why it is important, and inform them about what they will be voting on.

Thank you, Mr. Chairman and committee members. The Greater North Dakota Chamber of Commerce urges a **DO PASS** for HCR 3055. Thank you and I would be happy to answer any questions at this time.

ARTICLE XII

CORPORATIONS OTHER THAN MUNICIPAL

Section 1. The term "corporation", as used in this article, shall not be understood as embracing municipalities or political divisions of the state unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

Section 2. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the legislative assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

Section 3. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

Section 4. The legislative assembly shall not remit the forfeiture of the charter to any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

Section 5. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies and subjecting them to public use; the same as the property of individuals; and the exercise of the police power of this state shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the state.

Section 6. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer, provided, any cooperative corporation may adopt bylaws limiting the voting power of its stockholders.

Section 7. No foreign corporation shall do business in this state without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

Section 8. No corporation shall engage in any business other than that expressly authorized in its charter.

Section 9. No corporation shall issue stock or bonds except for money, labor donē, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained.

Section 10. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.

Section 11. Every railroad corporation organized and doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively;

the amount of stock paid in and by whom, and the transfers of said stock; the amount of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislative assembly shall pass laws enforcing by suitable penalties the provisions of this section; provided, the provisions of this section shall not be so construed as to apply to foreign corporations.

Section 12. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

Section 13. Railways heretofore constructed or that may hereafter be constructed in this state are hereby declared public highways, and all railroad, sleeping car, telegraph, telephone and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the legislative assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers from one point to another in this state; provided, that appeal may be had to the courts of this state from the rates so fixed; but the rates fixed by the legislative assembly or board of railroad commissioners shall remain in force pending the decision of the courts.

Section 14. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with the railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

Section 15. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the state treasurer for the redemption of such notes or bills.

Section 16. Any combination between individuals, corporations, associations, or either having for its object or effect the controlling of the price of any product of the soil or any article of manufacture of commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

Section 17. The exchange of "black lists" between corporations shall be prohibited.

Measure One Important to North Dakota Economic Development

By Ed Schafer

Measure #1 on the June 8th ballot will give voters an opportunity to amend our state's constitution to create a better atmosphere for business investment in North Dakota. This amendment relates to voting rights of shareholders in corporations and the preemptive rights of shareholders in the issuance of stock. While these concepts sound complicated, they are relatively easy to understand and I urge you to continue reading this article so you have the information to consider for your vote.

I became interested in this issue while helping to start a new company, Extend America, and our attorneys recommended that we NOT incorporate in North Dakota. They said for the good of the company we should register somewhere else and that was disappointing. We decided to incorporate here anyway and hope that now the voters will to change our constitution to give our shareholders the choice as to how they want to operate the company.

A positive vote for Measure #1 will allow companies to make choices about governance issues instead of being forced by constitutional mandates. North Dakota might be the only state that still mandates the use of cumulative voting procedures and this measure was placed on the ballot by a unanimous bi-partisan vote in the 2003 North Dakota Legislative Assembly to bring us up to date with the other states.

So, what is cumulative voting? Cumulative voting is a process that allows shareholders to "accumulate" their votes and together use them to vote for only one director. It is most easily understood through an example.

If a corporation has five director positions to fill, a shareholder will be allowed to cast one vote for each share of stock they own for each one of the five director positions. Under the cumulative voting provision, the shareholder could choose to cast all five votes for a single director position. In effect, this allows the shareholder to gather together the five votes and concentrate them on a single director position rather than one vote per position as is normally allowed.

Measure #1 makes it possible for shareholders to choose the option to vote this way if they so desire, but removes the mandate to do so.

Another process that Measure #1 will change is the preemptive right related to the issuance of stock. Currently our state's constitution mandates that when a corporation issues any additional stock, the existing shareholders have the preemptive right to maintain their current pro-rata share of stock in any new stock offering. This makes it more difficult for either public or private corporations to raise capital for growth purposes.

For example, assume that a shareholder in XYZ Corporation holds a 5% share of stock. If 100 new shares are issued, that shareholder would have a preemptive right to purchase 5% of the new offering to ensure his or her pro-rata share remained the same.

Measure #1 makes it possible for a corporation to offer shares in this way or not if they choose to, rather than a constitutional mandate.

Passing Measure # 1 is an important economic development issue that will make the state more business friendly and will enhance our attractiveness to start-up companies. It is challenging, time consuming, and expensive for a new corporation to include the North Dakota requirements into corporate governance documents. If one of North Dakota's goals is to become a more business friendly state, it is important for this constitutional amendment to pass.

Please join me on June 8th and vote YES on Measure #1. It is important for economic development in North Dakota.

**Testimony of Kelvin L. Hullet, President
Bismarck-Mandan Chamber of Commerce
Presented to the
House Constitutional Revision Committee
February 25, 2005**

HCR 3055

Mr. Chairman and members of the House Constitutional Revision Committee, my name is Kelvin Hullet, I am President of the Bismarck-Mandan Chamber of Commerce. I am here today in **Support** of House Concurrent Resolution 3055. First I would like to extend my thanks to Representative Johnson for acting as the Prime Sponsor on this bill.

I would also like to thank Representatives Kaiser and Ekstrom and Senators Klein, Krebsbach and Triplett for their support of this resolution.

I also want to extend thanks to the Secretary of State, Al Jaeger for this leadership in taking forward this initiative after the defeat of Measure No. 1 in last June's Election. It was after the defeat of Measure No. 1 which dealt with the issue of cumulative voting that really brought us to where we are today.

As you may recall, in June of 2004 a vote to amend one section, section 6, of Article 12 was defeated. This issue was first brought to the attention of the business community by the experience of former Governor Ed Schafer and his efforts to incorporate Extend America. During the creation of the company, the lawyers for the company recommended incorporating in a different state due to the cumulative voting measure in Article 12, Section 6. To the credit of the former Governor and his colleagues, they did incorporate the company in North Dakota but decided to make an effort to revise the constitution. Unfortunately, their first attempt was unsuccessful.

After the defeat of Measure No. 1, the Secretary of State asked a task force led by the Bar Association with representation from the business community to review the entire of Article 12 with the thought that many sections of Article 12 were outdated. In addition to reviewing the language of the N.D. Constitution, the group also reviewed the laws and language governing corporations in other states. What is before you today is the best thinking of not only that group but of other agencies and organizations within the state that have had a chance to review Article 12 and provide comment.

As you can see, what is being proposed is a somewhat dramatic revision by amending three sections and repealing 11 of the 17 articles on the Constitution. Business has changed over the last 100 years since the inception of the constitution. Many of the provisions in this article are outdated, no longer being followed or are superceded by Federal law. Changing the North Dakota Constitution is not a matter that should be taken lightly but there has been a process to ensure those governed or governing under this provision have had a chance for input.

As important to what happens here today, there is also a commitment to take this measure forward to the voters. In addition to our local Chamber, other Chambers of Commerce and the N.D. Chamber of Commerce have committed to working together and with other organizations to provide resources and efforts to educate the voters of North Dakota. We will also be asking you, the Legislature for your assistance in this endeavor.

Thank you, Mr. Chairman and committee members. In closing, I would ask the Committee to place a **DO PASS** designation on HCR 3055. Thank you and I would be happy to answer any questions at this time.

HCR 3055

Presented by:

**William W. Binek
Chief Counsel
Public Service Commission**

Before:

**House Constitutional Revisions Committee
Honorable Kim Koppelman, Chairman**

Date:

February 25, 2005

TESTIMONY

Mr. Chairman and committee members, my name is William Binek. I am Chief Counsel for the Public Service Commission. I am here today to offer my comments on HCR 3055 concerning primarily the proposed changes that relate to railroad corporations and Public Service Commission jurisdiction and authority over railroads.

A few weeks ago I was asked to review Article XII of the North Dakota Constitution to determine if the provisions relating to railroad corporations are necessary in the Constitution or whether they are sufficiently covered in state law. I specifically reviewed sections 7, 10, 11, 12, 13 and 14. I note that HCR 3055 contains no proposal to change section 10, so my comments here today will address only sections 7, 11, 12, 13 and 14.

Most regulatory jurisdiction over railroads is vested with the federal Surface Transportation Board (STB) and the Federal Railroad Authority (FRA). North Dakota law provides the Commission with specific regulatory powers to the extent those powers are not inconsistent with federal law.

Section 7. A foreign corporation should be required to have authority to conduct business in the state and have a registered agent, but should not be required to have a place of business.

Section 11. A railroad corporation organized and doing business in North Dakota is required to comply with existing North Dakota Corporate law. The provisions in section 11 regarding reports are unnecessary because all corporations are required to file reports required by state law. Furthermore, N.D.C.C. § 49-01.1-03(2) authorizes the Commission to require railroads to file reports and data necessary to carry out the Commission's regulatory functions.

Section 12. The provisions in section 12 are unnecessary because the STB has exclusive jurisdiction over consolidations and mergers.

Section 13. The provisions in section 13 are unnecessary because the only construction will be to existing lines and is subject to STB jurisdiction. Under N.D.C.C. § 49-10.1-01, the Commission may regulate railroad activities that constitute "intrastate" commerce to the extent that such regulations are not inconsistent with federal law. All railroads are common carriers under N.D.C.C. § 49-10.1-02, and to the extent not inconsistent with federal law, the Commission has authority to ensure that rates, facilities and services are just and reasonable and not unduly discriminatory, prejudicial or preferential. Under N.D.C.C. § 49-10.1-14, the Commission may adopt and enforce safety rules not inconsistent with any federal agency having jurisdiction over railroads.

Section 14. The provisions in section 14 are unnecessary because N.D.C.C. § 49-10.1-03 authorizes the Commission to regulate railroads in all matters affecting

relations between railroads to the extent not inconsistent with federal law. In addition, N.D.C.C. §§ 49-11-08 and 49-11-09 provide for crossing of one railroad by another.

This completes my testimony. I will be happy to answer any questions you may have.

HCR 3055

February 25, 2005

Testimony of Representative Nancy Johnson

Good afternoon Chairman Koppelman and members of the Constitutional Revision Committee. Before you this afternoon is HCR 3055 which addresses article 12 of the Constitution of North Dakota relating to Corporate Governance. I understand each of you has received a copy of the Article with the suggested revisions.

As you can see, what is being proposed is a fairly dramatic revision. It suggests amending three sections and repealing eleven of the seventeen sections in Article 12 of the Constitution. However, this is not being done without input from a variety of groups.

Allow me to explain. In June of 2004 a vote to amend one section, section 6, of Article 12 was defeated. Since that time the Secretary of State put together a task force to review all of Article 12. He asked the ND Bar Association to lead it and had representation from the business community. The group also reviewed the language governing corporations in other states.

After that group had reviewed the Article they recommended the changes you see before you. They also submitted the draft to several other groups for their review. Those groups included the Secretary of State's office, the Public Service Commission, the Attorney General's office, the League of Cities, the ND Association of Counties, the Bank of ND, ND Farm Bureau, economic developers, ND Public Employees Association, National Federation of Independent Businesses and attorneys of the Burlington Northern Railroad.

As you know, business has changed over the last 100 years since the creation of our Constitution. Many of the provisions in this article deal with railroads and are covered under the jurisdiction of the Federal Surface Transportation Board. Some of the provisions are just outdated and not being followed.

For example, Section 7 requires a foreign corporation (one located outside of the state) to have a business office within the state. In our global market place we are all aware of companies that we may do business with that do not have a presence in our state but we still have contact with them through multiple means.

Other provisions are still pertinent and remain. For example, Section 10 is being left alone because it deals with the power of cities to regulate their right of ways regarding construction and operation of a street railroad. It probably won't happen, but we have retained that right for them within this revision.

It is time to update this Article. There are several individuals here to present information on the specifics of this article and the impacts they will have. I'll freely admit they are much more knowledgeable than I am.

Changing the state constitution is a serious matter and I know this committee will give careful and thoughtful consideration to this resolution as have the parties who bring it to you.

Thank you for your time and effort.
I ask for your favorable consideration of HCR 3055.

HCR 3055

March 22, 2005

Testimony of Representative Nancy Johnson

Good morning Chairman Mutch and members of the Senate Industry, Business and Labor Committee. Before you this morning is HCR 3055 which addresses article 12 of the Constitution of North Dakota relating to Corporate Governance.

As you can see, what is being proposed is a fairly dramatic revision. It suggests amending three sections and repealing eleven of the seventeen sections in Article 12 of the Constitution. However, this is not being done without input from a variety of groups.

Allow me to explain. In June of 2004 a vote to amend one section, section 6, of Article 12 was defeated. Since that time the Secretary of State assembled a task force to review all of Article 12. He asked the ND Bar Association to lead it and had representation from the business community. The group also reviewed the language governing corporations in other states.

After that group had reviewed the Article they recommended the changes you see before you. They also submitted the draft to several other groups for their review. Those groups included the Secretary of State's office, the Public Service Commission, the Attorney General's office, the League of Cities, the ND Association of Counties, the Bank of ND, ND Farm Bureau, economic developers, ND Public Employees Association, National Federation of Independent Businesses, attorneys of the Burlington Northern Railroad as well as others.

As you know, business has changed over the last 100 years since the creation of our Constitution. Many of the provisions in this article deal with railroads and are covered under the jurisdiction of the Federal Surface Transportation Board. Some of the provisions are just outdated and not being followed.

For example, Section 7 requires a foreign corporation (one located outside of the state) to have a business office within the state. In our global market place we are all aware of companies that we may do business with that do not have a presence in our state but we still have contact with them through multiple means.

Other provisions are still pertinent and remain. For example, Section 10 is being left alone because it deals with the power of cities to regulate their right of ways regarding construction and operation of a street railroad. It probably won't happen, but we have retained that right for them within this revision.

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Changing the state constitution is a serious matter and I know this committee will give careful and thoughtful consideration to this resolution as have the parties who brought it to you.

Thank you for your time and effort.
I ask for your favorable consideration of HCR 3055.

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SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 22, 2005

TO: Senator Mutch, Chairman,
and Members of the Senate Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State, Vice Chairman, Board of University and School Lands

RE: HCR 3055 – Amend Article XII of the North Dakota Constitution

Article XII of the Constitution has not been amended since it was first adopted in 1889.

In the fall of 2001, former Governor Ed Schafer informed me about provisions in Article XII, specifically Sections 6 and 9, that were the basis for the attorneys for Extend America, Inc. advising that the corporation should be chartered in the State of Delaware rather than in North Dakota. However, because of his loyalty to the state, Extend America, Inc. was and still is chartered as a North Dakota corporation.

To address the concerns raised because of Section 6 and 9, the 2003 Legislative Assembly unanimously adopted SCR 4013 and it was placed on the June 2003 ballot as Measure # 1. Unfortunately, the measure failed on a yes vote of 31,462 (42%) to a no vote of 44,039 (58%).

However, because the need for a change still existed, after the election I contacted the North Dakota State Bar Association and asked if it would be possible to obtain their assistance in reviewing all of Article XII to determine if other changes were warranted in addition to Sections 6 and 9.

A small group was formed and the Secretary of State's office obtained the copies of the constitutions of other states so that they could be compared to North Dakota's. No other state had provisions similar to Sections 6 and 9. In fact, most states either do not have a reference or a very limited reference to corporations in their respective constitutions.

Then, realizing the importance of amending Article XII to provide a business friendly image for the State of North Dakota, representatives of the business community also became actively involved in the review and research.

The result of all of these efforts is the proposed amendment to Article XII as proposed in this resolution.

In addition to the input of the committee and not limited to the following, the draft of the resolution was reviewed by the following:

- Secretary of State
- Public Service Commission
- Attorney General
- North Dakota League of Cities
- North Dakota Association of Counties
- Bank of North Dakota
- North Dakota Farm Bureau
- Public Employees Association
- National Federation of Independent Business
- BNSF Railway – Attorneys
- North Dakota Association of Rural Electric Cooperatives
- North Dakota Farmer's Union

PROPOSED AMENDMENTS TO ARTICLE XII

Section 1: Amended in Section 1 of the Resolution to make it clear that the term corporation does not include municipalities or political subdivisions.

Section 2: Amended in Section 2 of the resolution to clarify the text that corporations hold a charter subject to the constitution and the laws adopted by the Legislative Assembly.

Section 3: This section is repealed because it pertains to the beginning date for corporations conducting business prior to enactment of the constitution in 1889.

Section 4: This section is repealed because it is no longer applicable and the amended Section 2 of the Resolution would govern it.

Section 5: This section is not being amended or repealed because it pertains to exercise of the right of eminent domain and that it cannot be abridged or construed to give corporations more protection than that of individuals.

Section 6: Amended in Section 3 of the Resolution to make it clear that, unless the articles of incorporation provide a different method of governance, the existing cumulative voting provisions in Section 6 will apply.

Section 7: This section is repealed because this provision already exists in the Century Code and it would be regulated under the powers given to the legislature in the amended Section 2 of the Resolution.

Section 8: This section is repealed because this provision already exists in the Century Code and it would be regulated under the powers given to the legislature in the amended Section 2 of the Resolution.

Section 9: This section is repealed because this provision already exists in the Century Code and it would be regulated under the powers given to the legislature in the amended Section 2 of the Resolution.

Section 10: This section is not being amended or repealed because it retains the rights of local authorities as it pertains to the construction of a street railroad, telegraph, telephone or electric light plant.

Section 11: This section is being repealed because N.D.C.C. § 49-01.103(2) authorizes the Public Service Commission to perform regulatory functions.

Section 12: This section is being repealed because it is no longer applicable because the federal government has exclusive jurisdiction over consolidations and mergers of railroads.

Section 13: This section is being repealed because a federal agency has jurisdiction and the Public Service Commission under the Century Code may regulate railroad activities that constitute "intrastate" commerce to the extent that such regulations are consistent with federal law.

Section 14: This section is being repealed because a federal agency has jurisdiction over railroads or authority is granted to the Public Service Commission in the Century Code.

Section 15: This section is being repealed because it is related to notes and bills designed for circulation and having ample security on deposit with the state treasurer for redemption.

Section 16: This section is not amended or repealed because it pertains to consumer protection and price controlling.

Section 17: This section is being repealed because this activity is unlawful under Federal law.

**Testimony of Kelvin L. Hullet, President
Bismarck-Mandan Chamber of Commerce
Presented to the Senate Industry, Business and Labor Committee
March 22, 2005**

HCR 3055

Mr. Chairman and members of the Industry, Business and Labor Committee, my name is Kelvin Hullet, I am President of the Bismarck-Mandan Chamber of Commerce. I am here today in **Support** of House Concurrent Resolution 3055. First I would like to extend my thanks to Representative Johnson for acting as the Prime Sponsor on this bill.

I would also like to thank Representatives Kaiser and Ekstrom and Senators Klein, Krebsbach and Triplett for their support of this resolution.

I also want to extend thanks to the Secretary of State, Al Jaeger for this leadership in taking forward this initiative after the defeat of Measure No. 1 in last June's Election. It was after the defeat of Measure No. 1 which dealt with the issue of cumulative voting that really brought us to where we are today.

As you may recall, in June of 2004 a vote to amend one section, section 6, of Article 12 was defeated. This issue was first brought to the attention of the business community by the experience of former Governor Ed Schafer and his efforts to incorporate Extend America. During the creation of the company, the lawyers for the company recommended incorporating in a different state due to the cumulative voting measure in Article 12, Section 6. To the credit of the former Governor and his colleagues, they did incorporate the company in North Dakota but decided to make an effort to revise the constitution. Unfortunately, their first attempt was unsuccessful.

After the defeat of Measure No. 1, the Secretary of State asked a task force led by the Bar Association with representation from the business community to review the entire of Article 12 with the thought that many sections of Article 12 were outdated. In addition to reviewing the language of the N.D. Constitution, the group also reviewed the laws and language governing corporations in other states. What is before you today is the best thinking of not only that group but of other agencies and organizations within the state that have had a chance to review Article 12 and provide comment.

As you can see, what is being proposed is a somewhat dramatic revision by amending three sections and repealing 11 of the 17 articles on the Constitution. Business has changed over the last 100 years since the inception of the constitution. Many of the provisions in this article are outdated, no longer being followed or are superceded by Federal law. Changing the North Dakota Constitution is not a matter that should be taken lightly but there has been a process to ensure those governed or governing under this provision have had a chance for input.

As important to what happens here today, there is also a commitment to take this measure forward to the voters. In addition to our local Chamber, other Chambers of Commerce and the N.D. Chamber of Commerce have committed to working together and with other organizations to provide resources and efforts to educate the voters of North Dakota. We will also be asking you, the Legislature for your assistance in this endeavor.

Thank you, Mr. Chairman and committee members. In closing, I would ask the Committee to place a **DO PASS** designation on HCR 3055. Thank you and I would be happy to answer any questions at this time.

**Testimony of David Straley
Greater North Dakota Chamber of Commerce
Presented to the Senate IBL Committee
March 22, 2005**



HCR 3055

Mr. Chairman and members of the Senate Industry, Business and Labor Committee, my name is David Straley. I am here today representing the Greater North Dakota Chamber of Commerce to urge your **support** of House Concurrent Resolution 3055.

The business community feels that the changes in this resolution are positive for North Dakota. As these provisions of the constitution may have been appropriate over a century ago, it is time to look at today's current environment and current needs of corporations to make an informed decision regarding Article XII. In addition to a cleanup of some the language, the sections being removed are no longer applicable or are being brought under the North Dakota Century Code.

Section 3 of the resolution is important because it removes a constitutional mandate. This change provides any corporation with the opportunity to set out the shareholder rights in the corporation's articles of incorporation. This change would allow the flexibility for the corporation to choose what they feel is best for them. We believe that this choice should be left to the corporation, limited by what they choose, not mandated by the constitution.

Please remember, this resolution does not eliminate cumulative voting, but allows the corporation to choose which method they would like for shareholder voting. It also provides a

default, so that if any corporation is set up and its articles of incorporation are silent on this issue, then cumulative voting comes into effect.

If this resolution passes, the ND Chamber of Commerce will work to provide resources to educate the people of North Dakota. We will do this through our network of area Chambers of Commerce across the state. We will strive to alert people about what this change does, why it is important, and inform them about what they will be voting on.

Thank you, Chairman Mutch, and committee members. The Greater North Dakota Chamber of Commerce urges a **DO PASS** for HCR 3055. Thank you and I would be happy to answer any questions at this time.

HCR 3055

Neutral

Presented by:

**William W. Binek
Chief Counsel
Public Service Commission**

Before:

**Senate Industry, Business and Labor
Senator Duane Mutch, Chairman**

Date:

March 22, 2005

TESTIMONY

Mr. Chairman and committee members, my name is William Binek. I am Chief Counsel for the Public Service Commission. I am here today to offer my comments on HCR 3055 concerning primarily the proposed changes that relate to railroad corporations and Public Service Commission jurisdiction and authority over railroads.

A few weeks ago I was asked to review Article XII of the North Dakota Constitution to determine if the provisions relating to railroad corporations are necessary in the Constitution or whether they are sufficiently covered in state law. I specifically reviewed sections 7, 10, 11, 12, 13 and 14. I note that HCR 3055 contains no proposal to change section 10, so my comments here today will address only sections 7, 11, 12, 13 and 14.

Most regulatory jurisdiction over railroads is vested with the federal Surface Transportation Board (STB) and the Federal Railroad Authority (FRA). North Dakota law provides the Commission with specific regulatory powers to the extent those powers are not inconsistent with federal law.

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Section 13. The provisions in section 13 are unnecessary because the only construction will be to existing lines and is subject to STB jurisdiction. Under N.D.C.C. § 49-10.1-01, the Commission may regulate railroad activities that constitute "intrastate" commerce to the extent that such regulations are not inconsistent with federal law. All railroads are common carriers under N.D.C.C. § 49-10.1-02, and to the extent not inconsistent with federal law, the Commission has authority to ensure that rates, facilities and services are just and reasonable and not unduly discriminatory, prejudicial or preferential. Under N.D.C.C. § 49-10.1-14, the Commission may adopt and enforce safety rules not inconsistent with any federal agency having jurisdiction over railroads.

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relations between railroads to the extent not inconsistent with federal law. In addition, N.D.C.C. §§ 49-11-08 and 49-11-09 provide for crossing of one railroad by another.

This completes my testimony. I will be happy to answer any questions you may have.