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DESCRIPTION

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2007 HOUSE CONSTITUTIONAL REVISION

HCR 3055

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3055

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 2-22-07

Recorder Job Number: 3625

Committee Clerk Signature

*Glenn Horn*

Minutes:

**Chairman Koppelman:** Opened the hearing on HCR 3055

**Vice Chairman Kretschmar, District 28:** Introduced HCR 3055 ... it's the last major unfinished part of the 1972 proposed constitution that has not been adopted by the people of North Dakota. Basically, what it will do is to authorize the state executive branch to be made of not more than 25 departments and right now each of the elected state officials would be a department so that takes up about 7 of them. Based on past history, if this resolution were passed, these revisions would come along over time. This resolution also gives more authority to the Governor to make adjustments in the executive branch of the government. He or she could do it by executive order and the legislature then would have the power to veto ... those changes would have to be submitted to the legislature for approval. This resolution increases the authority of the governor in our system in North Dakota although it doesn't lessen the authority of the legislature.

**Representative Griffin:** How many departments are there currently?

**Vice Chairman Kretschmar:** More than 25, there are agencies and there are dozens of them ... they would have to fit in somewhere. This would take years to get everything fit together and the governor and the legislature would be working together with that.

**Chairman Koppelman:** Would you envision that every board or commission or committee be considered departments or would there be the 25 departments maximum and those things would exist off to the side?

**Vice Chairman Kretschmar:** They would have to fit into one of the existing departments.

**Chairman Koppelman:** As far as the Governor's authority under this proposal ... what authority does the Governor currently have to adjust things in the executive branch?

**Vice Chairman Kretschmar:** I don't think there's a great deal ... the Governor has some power by executive order to establish various things but historically, we have a weak governorship in North Dakota ... this would strengthen it.

**Chairman Koppelman:** One of the potential concerns ... what if the legislature used up the 80 days and therefore could not call itself back into special session and a crafty governor were to look at this measure and make some wholesale changes and say I hereby submit them to the legislature and then not call them back into session?

**Vice Chairman Kretschmar:** It would have to be submitted at the beginning of the next regular session.

**Chairman Koppelman:** You don't believe that a governor could make the changes and say "Well, the legislature has 30 days and they haven't done anything so it stands"?

**Vice Chairman Kretschmar:** I don't think it's probable in modern government ... plus the next regular session would be a lively one.

**Representative Klemin:** What problem are we trying to resolve with this resolution?

**Vice Chairman Kretschmar:** Most of things could be done by statute, but to date they haven't been done and I think the principal thing in this is giving the Governor more authority to make some of those changes by executive order.

**Representative Klemin:** I think an argument could be made that you're infringing upon the power of the executive branch of government by basically giving the legislature the authority to set up the executive branch of government and tell them how to operate and what to do and giving the Governor the ability to change things subject only to legislative disapproval ... couldn't that be argued that you're really infringing on the executive branch?

**Vice Chairman Kretschmar:** Right now, major changes, in the executive branch operation, are done by the legislature passing laws.

**Representative Klemin:** What's wrong with the way we do things now?

**Vice Chairman Kretschmar:** If you look at the chart of the executive branch ... it's all over the place ... it would be more logical and more efficient to have less of this wide spread agencies, commissions, committees, etc.

**Representative Conrad:** I think it would be helpful to have that chart.

**Chairman Koppelman:** Has there ever been an interim study done on this subject?

**Vice Chairman Kretschmar:** Not that I'm aware of.

**Chairman Koppelman:** Might be helpful.

**Representative Klemin:** This chart that you're talking about was created by the Chamber of Commerce (I think).

**Vice Chairman Kretschmar:** During the centennial of the state, the Legislative Council made the chart.

**Representative Klemin:** So the chart is only as up to date as that?

**Vice Chairman Kretschmar:** There have been a great many changes since that time.

**Chairman Koppelman:** Any further testimony in support, if not, any testimony in opposition?

**Bill Shalob, Representative of the North Dakota Chamber of Commerce:** I'm only here in opposition because I've learned my lesson about being neutral. The only position the

chamber has is on workforce safety ... I don't know where it falls in this, first of workforce safety, on the first 1/2, is a work in progress ... each House in terms of government, is a work in progress, each House will receive a bill from the other 1460 from the House and 2257 from the Senate which will deal with (*can't understand*) and we will take up those issues in the 2<sup>nd</sup> ½ on each side as we go through and talk about that. We don't know where Workforce Safety falls within this and our position is that whatever's going to be done is going to be done with the legislature and should not be subject to executive things in the interim. On Line 19 & 20 we read where the organization of powers, that the State Board of Higher Education can't be affected, but that's a constitutional change, understanding that the changes that were made in Workforce Safety in 1997 were statutory, but then we look down in the next lines, 20, 21 and 22, where they talk about changes in the statutory allocation of functions and powers and doings within the executive departments, not knowing whether Workforce Safety would be considered an executive department. We would want to make sure that whatever things that implied to this, if it went through, would exempt that department also.

**Representative Conrad:** If it's not an executive agency, what is it ... we have legislative, judicial and executive?

**Shalob:** Somewhere in between, because it's like a Board of Higher Education but it doesn't have the constitutional authority or the constitutionality of the Board of Higher Education so presumably, it is an executive agency and then we would have concern that the Governor could undo statutorily all the things that this legislature has done within an interim.

**Representative Conrad:** (*can't understand*) by executive order, but then would have to submit to the legislature.

**Shalob:** That would be correct ... 18 months later or so and given the changes that we made statutorily within the Workforce Safety since 1997 ... we don't think that would be in the best interest of the agency.

**Representative Conrad:** I'm really curious about this (*can't understand*) and maybe this would correct that.

**Shalob:** I believe were having those discussions and those discussions we're having in 2 bills in the House and the Senate in the 1<sup>st</sup> ½ and they're going to be heard in the 2<sup>nd</sup> ½ in 1460 and 2257 and that's more properly where those issues should be addressed, not if HCR 3055 is passed ... it should provide for some kind of exemption for that agency, which is essentially hybrid at this point.

**Chairman Koppelman:** If no further testimony in opposition or neutral, we'll close the hearing on HCR 3055.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3055

House Constitutional Revision Committee

Check here for Conference Committee

Hearing Date: 2-27-07

Recorder Job Number: 4043

Committee Clerk Signature 

Minutes:

**Chairman Koppelman:** We'll take a look at HCR 3055

**Vice Chairman Kretschmar:** I would like to **move an amendment**. Line 24, delete the word "same" and insert the word first and after day add the next regular session.

**Representative Griffin:** I second it.

**Chairman Koppelman:** The proposed amendment would allow the legislature to act on the first day of the next regular session. Would the change that the Governor would make, if this passed, hold until the next session or would it be operational until then?

**Vice Chairman Kretschmar:** It would not go into effect until the next session and the Governor's proposal would be presented to the legislature on the first day of the next regular session and there would be 30 days to act.

**Voice Vote Yes 9 No 0 Motion Carries**

**Representative Klemin:** With all due respect to Vice Chairman Kretschmar ... I'm having a problem with the legislature telling the executive, basically, what to do (*can't understand*) ...

also, I don't want the WSI to go back to the Governor ... and lastly, I don't think things are



working that badly the way they are so I'm going to make a motion for a **DO NOT PASS AS AMENDED**

**Representative Dahl:** I'll second it.

**Vice Chairman Kretschmar:** I'll oppose a do not pass. I think it's time that this proposal be presented to the people of our state to allow for more redirection ... for more efficient use of the executive branch of the government. I think it would be a good thing to give the Governor some more power.

**Chairman Koppelman:** In all fairness, this could still be done, I assume, by the legislature.

**Representative Conrad:** This is really unfair ... to get that clarity for the public and I was flabbergasted at the response to the question ... they aren't judiciary, they aren't legislative, they aren't executive ... what are they? I think that what the public I've heard from is really concerned about is, who is responsible for that?

**Chairman Koppelman:** Unless there's further discussion we'll take the roll call vote on a **DO NOT PASS AS AMENDED. Motion Fails** Yes 4 No 5 Absent 0

**Representative Schneider:** I move a **DO PASS AS AMENDED**

**Representative Griffin:** I second it

Yes 4 No 5 Absent 0 Motion Failed

**Representative Owens:** My concern is with the progress in *W & SI* (not sure if I understood) even though some people don't view it as progress, long before I joined the group. The way it was structured and all the progress that's been made there (it's not perfect) ... it just does reverse the way it's set up. I would hope for another amendment to do something to adjust

that ... that's why I didn't vote for the Do Not Pass because I think there's some elements in here that are good yet I'm concerned about some other elements.

**Vice Chairman Kretschmar:** As I read the resolution, the only way that any department of government can be changed is if this legislative assembly does it.

**Chairman Koppelman:** The reason I voted against favorable recommendation on this resolution in the first place was that we probably have the authority to do that now, to a great extent. *(can't hear)*

**Vice Chairman Kretschmar:** I would move that we **send this down without recommendation**

**Chairman Koppelman:** I don't know if we need a motion but we can take it down.

**Representative Klemin:** There does need to be a motion.

**Chairman Koppelman:** Any other motions, if not I will carry this to the floor without committee recommendation which means I will do this on a neutral basis ... not for or against it ... I'll just explain it.

*A vote was not taken in committee and because of the deadline the clerk polled each committee member the following day (per LC) a motion made and seconded and each member voted as shown below..*

**Representative Griffin: Made motion to take without recommendation**

**Representative Dahl: Seconded the motion**

Yes 8    No 1    Absent 0    Carrier    Chairman Koppelman

Date: <sup>27</sup> 2-26-07  
Roll Call Vote #:

2007 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 By Amendment

Motion Made By Kretsch

Seconded By Griffin

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Representative Conrad		
Vice Chairman Kretschmar			Representative Griffin		
Representative Dahl			Representative Schneider		
Representative Klemin					
Representative Meier					
Representative Owens					

Total (Yes) 9 No 0

Absent \_\_\_\_\_

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

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

Date: 2-27-07  
Roll Call Vote #: 2

2007 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 Do Not Pass As Amended

Motion Made By Klein Seconded By Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conrad		✓
Vice Chairman Kretschmar		✓	Representative Griffin		✓
Representative Dahl	✓		Representative Schneider		✓
Representative Klemin	✓				
Representative Meier	✓				
Representative Owens		✓			

Total (Yes) 4 No 5

Absent \_\_\_\_\_

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

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

Date: 2-27-07  
Roll Call Vote #: 3

2007 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 As Amended

Motion Made By Schneider Seconded By Griffin

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		✓	Representative Conrad	✓	
Vice Chairman Kretschmar	✓		Representative Griffin	✓	
Representative Dahl		✓	Representative Schneider	✓	
Representative Klemin		✓			
Representative Meier		✓			
Representative Owens		✓			

Total (Yes) 4 No 5

Absent \_\_\_\_\_

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

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

Sailed

Date: 2-27-07 actual  
Roll Call Vote #: 4  
2-28-07

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HR 3055

House Constitutional Revision Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Without Recommendation

Motion Made By Griffin Seconded By Dahl

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conrad	✓	
Vice Chairman Kretschmar	✓		Representative Griffin	✓	
Representative Dahl	✓		Representative Schneider		✓
Representative Klemin	✓				
Representative Meier	✓				
Representative Owens	✓				

Total (Yes) 8 No 1

Absent 0

Floor Assignment Koppelman

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

A vote was not taken ... due to deadline at the suggestion of Jay B, PC, the clerk called each member the following day.

**REPORT OF STANDING COMMITTEE**

**HCR 3055: Constitutional Revision Committee (Rep. Koppelman, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (8 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3055 was placed on the Sixth order on the calendar.

Page 1, line 24, replace "same" with "first" and after "day" insert "of the next regular session of the legislative assembly"

Renumber accordingly