

2011 HOUSE CONSTITUTIONAL REVISION

HCR 3043

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee  
Prairie Room, State Capitol

HCR 3043  
March 16, 2011  
Job #15541

Conference Committee

Committee Clerk Signature	<i>May Main</i>
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## Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study the filling of vacancies in the Legislative Assembly.

## Minutes:

**Chairman Koppelman:** We'll open the hearing on HCR 3043.

**Vice Chairman Kretschmar:** I don't give up easily on some things, at least the things that I'm really concerned about. Earlier this session we had a bill that came from Judiciary or Political Subdivision regarding the filling of legislative vacancies. I'm a firm believer that legislators should be elected by the people of their district. During the 1995 session, a very well respected legislator and good friend of mine, Representative Clarence Martin, was home for the weekend and suddenly passed away. We adjourned the legislature one day and took a couple of busses to Dickinson for the funeral mass. There was discussion as to what would happen in a situation like that because there was no provision in the law then to fill a vacancy where a death occurred during the regular session. In my legislative career, that's only been done twice so it's very rare. Representative Martin and back in '73 Representative Poiser passed away during the session. In the bill that I introduced earlier, I did not change the appointment procedure when a vacancy occurs during a regular session. The bill would have changed the system and there would have to have been an election to fill a vacancy if it occurred during the off session. Under the bill the Governor was given the authority to call that special election. In certain instances we said the Governor had to do it and in some instances he may do it depending on the political situation or the situation in that district. This resolution would request the Legislative Counsel to put this on a study for this coming interim and that is basically all it does. If it is approved by this committee and passes the House and Senate and then it's up to the Legislative Management Committee after the session to choose the studies that they want to have done.

**Representative Winrich:** As I recall the current procedure whereby the district committee appoints someone to fill a vacancy was put into law in the 2001 or 2003 session. The argument at that time was if there was a death or something during the session that this would allow districts to have that full representation in a much quicker manner because it takes a month or weeks or more to conduct a special election. Do you have any thoughts about what sort of procedure might go into place in view of the time frame?

**Vice Chairman Kretschmar:** The bill that we heard earlier made no change in that particular bill for vacancies that occurred during a regular session. The current appointment procedure would be effect for those situations. I can't tell you the exact session but there was a gentleman elected to the House at the general election and there were allegations that he had left money at a bar to buy the boys a drink. There was going to be a hearing because that's a prohibited campaign practice in a sense and in the meantime this gentleman did resign his seat. This resignation occurred in late November or early December. The governor called a special election around the second week of January and a new representative was elected in that district and served in the session but missed the first week or ten days. When we use the appointive process and if it occurs just during the sessions, it would be a very rare occasion that it would happen but it certainly could happen. It's just a small number of people who appoint someone to the state legislature. I recall that the appointive system was passed in the '97 session. In the 10 or 12 years that we've had the system in place there have been a number of instances where people have been appointed and have not survived in the election. Even in the election in 2010, that occurred once or twice I think and in one election there was an instance where the person did not even survive the primary in that district. It seems to me someone who's appointed to the Legislative Assembly and serves as a legislature on interim committees and sometimes during a regular session, that they get all the benefits that all of us get for being legislators and someone who has never served in a regular session is not quite a legislator yet. That's my thinking.

**Chairman Koppelman:** Any further support for HCR 3043? Opposition? We'll close the hearing on 3043.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Constitutional Revision Committee  
Prairie Room, State Capitol

HCR 3043  
March 22, 2011  
Job #15824

Conference Committee

Committee Clerk Signature

*Mary Main*

## Minutes:

**Chairman Koppelman:** HCR 3043 deals with filling vacancies. This would keep the current system if a vacancy occurs during a session but otherwise would call for a special election. Is that essentially it?

**Vice Chairman Kretschmar:** I don't know what the study would bring forth. The bill I introduced into the session that was defeated went in that direction.

**Chairman Koppelman:** This would just be a general study.

**Vice Chairman Kretschmar:** That's right. I would move a do pass on HCR 3043.

**Representative Owens:** Second.

**Representative Kasper:** I don't see any problem with offering a study on this one. Vice Chairman Kretschmar deserves one out of three so I'm going to support the motion.

**Representative Owens:** I seconded it from the standpoint of in the short time I've been living here, this procedure has changed in the time that I've lived in North Dakota, 19 years now. I've always wondered if that was the right way or the way we are doing it now is the right way. I think the study could be of value.

**Vice Chairman Kretschmar:** The bill I introduced that was defeated earlier in the session did get 41 votes so inching ahead each session. The only way to fill a vacancy in the United States House of Representatives is by an election. They call special elections in various states when vacancies do occur. It's a little different with the United States Senate; the Governor in our state can appoint someone until the next statewide election. Members of the House always have to be elected on the national level. I'm supporting the study.

**Representative Holman:** I've been involved with this a couple of times, one just recently. We had the illness of Senator Lindaas' wife that came on rather quickly and shortly after election time, he announced his resignation from the senate and we went through the process of seeking applications and interviewing and each applicant had to write a position paper. We went through a process. That's not in the law. The law was so that I think our district chair could have just picked somebody. It's almost that open. What we did was more in line with what we felt was a proper process. Had we had an election at that stage

of the game, November or December, we probably wouldn't have had someone certified to serve and represent our district by the time the session opened. The other instance was prior to the law change was when Senator Clark Ewen died in 1990 and then we had a special election. The process at that time was that we had a special election in the first week in December right after the general election. Senator Lindaas who just resigned was the one that actively campaigned and there was statewide involvement because at that time it determined the majority leadership of the Senate. It was an interesting thing for our district because we had all kind of heavy weights coming in and campaigning for each candidate. It was a lot of fun and a good election. The process is different in those two instances plus many others I'm sure would play into the study. I don't have a problem supporting something like this just to see that we give the best possible representation to the people of North Dakota and that's what we should be doing.

**Representative Winrich:** I support the concept of electing our representatives whenever possible so I will support the do pass. I think we should also recognize that there is at least one what I consider to be a fault of the present system that only allows for appointment and that is the situation where a member of the legislature is planning to retire and literally resigns early rather than fulfilling their term simply so that someone else can be appointed to that position and have the title and at least some of the benefit of being the sort of incumbent in that position. I think that's unfortunate in many cases.

**Chairman Koppelman:** Or it could work the other way where they run for reelection with no intension of serving out the term because they are a popular vote getter in their district and then resign. It does leave room for mischief I think. I did not support Vice Chairman Kretschmar bill on this topic all though I think it was the best approach I've seen to changing the system if we do want to change it. The difficulty that all of us that have served for a while see in strictly a special election approach is that some of the people are disenfranchised because a district could have only one member of the House representing it as in the case of when Representative Martin passed away during the session. I think that's why the system we have came to be but as Vice Chairman Kretschmar bill would have proposed there would be this system that we have now basically during the session if that would occur and if it would occur during the interim outside of that window, it would be a special election. I think it's an idea worthy of consideration and I will support the motion for that reason. Call the roll on a do pass recommendation on HCR 3043.

**8 Yes, 0 No, 3 Absent**

**Do Pass**

**Carrier: Vice Chairman Kretschmar**

**Consent Calendar**

Date: March 22, 2011  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3043

House Constitutional Revision Committee

Check here for Conference Committee

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

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

Motion Made By Rep. Kretschmar Seconded By Representative Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Representative Conklin	AB	
Vice Chairman Kretschmar	✓		Representative Holman	✓	
Representative Kasper	✓		Representative Winrich	✓	
Representative Louser	✓				
Representative Meier	AB				
Representative Owens	✓				
Representative Schatz	AB				
Representative Streyle	✓				

Total (Yes) 8 No 0

Absent 3

Floor Assignment Representative Kretschmar

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

*Consent  
Calendar*

**REPORT OF STANDING COMMITTEE**

**HCR 3043: Constitutional Revision Committee (Rep. Koppelman, Chairman)**  
recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR**  
(8 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HCR 3043 was placed on the  
Tenth order on the calendar.

2011 SENATE JUDICIARY

HCR 3043

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HCR 3043  
4/4/11  
Job #16295

Conference Committee

Committee Clerk Signature



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

Directing Legislative Management to study the filling of vacancies in the Legislative assembly.

Minutes:

## Senator Nething – Chairman

**Senator Sitte** - Says she will fill on the intent of the study. She explains there are concerns allowing the precinct committee people to fill vacancies.

**Senator Nething** – Adds that in 1997 session in which K. Solberg from Rugby was trying to find a better way to do this. He goes on to say this has been in place for some time with mixed results. It may be time for a study.

**Senator Nelson** – Mentions last session when Rep. Schneider resigned to take another position it did force districts for the state party to take a strong look at their by-laws. She said there was a lot of discussion on what constitutes a district committee. She goes on to say the state by-laws were changed that it was the state committee that exists on the day of the resignation.

**Senator Olafson** – Mentions one of the cons of the system is that there are not many people involved so a district committee makes a big decision. He says it is not a perfect system to fill a Legislative vacancy.

**Senator Sitte** – moves a do pass

**Senator Lyson** – Lyson seconded

Roll call vote – 6 yes, 0 no

Motion passes

**Senator Sitte** will carry



**REPORT OF STANDING COMMITTEE**

**HCR 3043: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3043 was placed on the  
Fourteenth order on the calendar.