

2013 SENATE JUDICIARY

SCR 4006

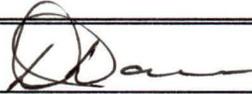
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SCR4006
1/22/2013
Job #17502

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to the effective date of initiated measures

Senator David Hogue - Chairman
Senator Margaret Sitte - Vice Chairman

Senator David Hogue - District 38 - Introduces the bill - See written testimony.

Opposition

Ralph Muecke - Gladstone N.D. - He says the initiated referral process is very near and dear to him and he is always on the look-out for anything that is going to impair or restrict that right. He gives a history of why we have this process. He said this was established so the people have another voice. He sees this as totally unnecessary.

Susan Beehler - Mandan resident - Said she is a firm believer in the initiative and referral process and she does not want to see anything hinder that. She thinks this will make it harder for the average citizen to petition.

Leon Malberg - Dickinson - Says this is bill is a solution struggling to find a problem. He tells of his frustrations.

Neutral

Jon Godfread - Greater ND Chamber of Commerce - Said he is conflicted on how to approach this. He said this debate is whether we put this measure on the ballot.

Close the hearing

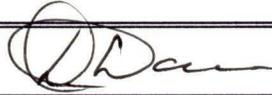
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SCR4006
2/13/2013
Job #18915

Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Hogue proposes an amendment and explains what it does. The committee discusses the right to initiated measures. Senator Grabinger says he cannot support this and says people will make the right choice. Senator Hogue states that because our state has a lot of money folks will continue to come with ways and put it on a ballot. His concern is that we are starting to see the people in the state that think they are in support of a measure are being outspent by out of state interests that either oppose or support a measure.

Senator Berry moves the amendment - 13.3014.03001

Senator Lyson seconded

Verbal vote - all yes

Senator Berry moves a do pass as amended

Senator Armstrong seconded

Vote 4 yes, 3 no

Motion passes

Senator Hogue will carry

13.3014.03001
Title.04000

Prepared by the Legislative Council staff for
Senator Hogue
January 30, 2013

43
2-14-13

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4006

Page 1, line 8, replace "forty" with "fifty"

Page 2, line 11, replace "forty" with "fifty"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SCR 4006: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SCR 4006 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "forty" with "fifty"

Page 2, line 11, replace "forty" with "fifty"

Renumber accordingly

2013 HOUSE JUDICIARY

SCR 4006

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SCR 4006
March 27, 2013
Job 20561

Conference Committee

Kristie Hatcher

Explanation or reason for introduction of bill/resolution:

Concurrent resolution relating to limited legislative review of initiated measures substantially affecting the state budget; relating to the effective date of initiated measures.

Minutes:

Testimony #1

Chairman Kim Koppelman: Opens SCR 4006.

Senator Hogue: 2:00 Testimony #1, see attached.

Rep. Kathy Hogan: Is it your intent that taxation issue be included in this process?

Senator Hogue: If it is going to have a \$50 million impact, yes.

Rep. Lois Delmore: Is there any danger in putting the decision in just a few people's hands.

Senator Hogue: Someone has to make the call and I did not want to put it into one person's hands, so I thought 3 is a good balance.

Rep. Lois Delmore: Can you give us rationale for using 40% instead of 60%?

Senator Hogue: It's my belief that if it can't get 40% approval, there is something fundamentally wrong with it.

Rep. Bill Kretschmar: Under our current Constitution set up initiated measures can only be voted on in even number years.

Senator Hogue: 15:40 That is true.

Rep. Vicky Steiner: It states limited legislative review, isn't that hampering, restricting, or impairing?

Senator Hogue: The court would look at the most recent adoption.

Vice Chairman Larry Klemin: If the initiated measure is amending the Constitution, does this still give the legislature authority to accept or reject a constitutional amendment that's approved by an initiated measure?

Senator Hogue: I would say it does because the objective is that we want some fiscal discipline in the way that we spend public dollars.

Chairman Kim Koppelman: Two out of the three individuals are from the executive branch, how is that going to work with the power?

Senator Hogue: I just wanted it to be diversified and not just one individual's decision.

Chairman Kim Koppelman: 22:02 One of the comments I hear is our Constitution is more like another Century Code. Have you thought about putting before the people the question of "should we limited the kinds of things that can be in the Constitution without restricting the public's rights to initiate measures that might me statutes?"

Senator Hogue: I have not thought about, I do concur with you about how careful we must be when putting things into the constitution.

Rep. Lois Delmore: One of the things we talk about is the people's house and the people's money, the citizens of ND all pay their taxes to go to that. What do you say to someone that questions why they wouldn't have a say when they are the ones that paid money into the state?

Senator Hogue: I would refer them to the history of the state of California.

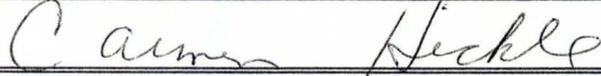
Chairman Kim Koppelman: Closed hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SCR 4006
April 3, 2013
Job # 20824

Conference Committee



Explanation or reason for introduction of bill/resolution:

Concurrent resolution relating to limited legislative review of initiated measures substantially affecting the state budget; relating to the effective date of initiated measures.

Minutes:

Proposed amendment 1

Chairman Kim Koppelman: Opens SCR 4006 for committee work.

Rep. Nathan Toman: Explained proposed amendment 13.3014.04002. It is a hog house amendment but I was trying to stick within the premise of Senator Hogue's concerns of initiating ourselves into bankruptcy through the Constitution. I requested if a petition before it is approved appropriates public funds it would not be approved because we don't want to be appropriating funds of special interest out of a Constitutional initiated ballot measure. It also protects the Constitutional mandated functions from being, well if they are not going to fund public schools that can't be circulated as a petition.

Chairman Kim Koppelman: Asked John Bjornson to explain some of the wording.

John Bjornson: Take a look at the Constitutional mandated function because we may have drafted it in an over broad sense which might suggest you can't actually amend the Constitution. This is a tricky area and Constitution function of the Legislative assembly.

Chairman Kim Koppelman: Would this prevent the Legislative assembly from fulfilling a Constitutional mandated function.

John Bjornson: The Constitution says a Legislative assembly shall redistrict itself every ten years. The last several sessions you had proposed Constitutional amendments that you changed to say an independent commission should do that. Now with the Attorney General and this review say well that affects a constitutionally mandated function of the Legislative assembly therefore you can't do it which then in essence say you can never change this type of process. So that is one of the things that came to mind when I saw particular language.

Chairman Kim Koppelman: I think I'm tracking what you are saying. If we were to say would prevent the Legislative assembly from fulfilling a Constitutional mandated function unless that section of the Constitution is amended or similar. Would that get at what you are talking about

because I think what Rep. Toman just explained and his intent is the Constitution calls for the Legislature to provide for a system of free public education. If someone initiated a measure without amending that out of the Constitution and said you can't fund public schools anymore.

John Bjornson: There are situations and you do it as well on occasion, you might amend or create a new section of law that essentially would supersede another section without actually repealing that other section. I think what you just stated; we do have this section that says the free public schools if a new section was created in the Constitution that sets up something contrary to that, under this proposal you couldn't do that unless you explicitly repealed that. As opposed to creating a new section that would implicitly repeal it.

Chairman Kim Koppelman: Yes, it would have to be a methodical intent to say we are not going to fund education anymore or whatever example you use.

Vice Chairman Larry Klemin: Rather than having a function by implication would it not have to be a specific Constitutional mandated function?

John Bjornson: I agree.

Rep. Bill Kretschmar: If this amendment were in the Constitution would it have prevented measure #2 on the last primary ballot going on about repealing property tax?

John Bjornson: I'm not sure; there are other questions that come to mind too. The language states it would provide for an appropriation of public funds there are a lot of mandates that don't actually provide for an appropriation. But at some point require you to provide money. This discussion has gone on for a while now with respect to the initiated statutory measure that set up the tobacco prevention committee. That didn't specifically appropriate money but it requires the Legislative assembly to appropriate money in some way. There are these grey areas.

Rep. Kathy Hogan: We have been dealing financial aid stabilization fund and the Constitutional issues that wouldn't be allowed under this?

John Bjornson: The one I saw in the last couple of days, maybe the one you amended yesterday, would be on a shaky ground.

Rep. Kathy Hogan: It couldn't be initiated?

John Bjornson: I would agree with that?

Rep. Lois Delmore: Has anyone talked to the Attorney General to see what he thinks, basically he is the Officer that will decide? I am curious of what his reaction might be.

Rep. Andy Maragos: Would this in a way conflict with that part of the Constitution?

John Bjornson: As I recall that part of the Constitution says the Legislative assembly may not by law limit or impede the ability to initiate or refer measures. This would be a Constitutional amendment to a certain extent limit that authority. But because it is a part of the Constitution it wouldn't be unconstitutional.

Rep. Nathan Toman: My intent is not to restrict a measure from coming forward such as measure 2 or a new measure saying the state shall levy no income tax. An indirect appropriation was not the intent of this, a direct appropriation to a new fund for a special interest group or a new fund that the public would initiate. Indirect funding would be appropriate in my mind not direct funding.

Chairman Kim Koppelman: What we are looking at Sen. Hogue is recommending is a process by which measures that appropriate or dedicate public funds for a specific purpose or require the Legislative assembly to appropriate funds for a specific purpose or any measure that is estimated to have a fiscal impact of \$40M or more could be disallowed from going on the ballot. Now the way he seeks to do that is by creating a panel, a three member committee consisting of the Director of the Office of Management and Budget, the chairman of the Legislative Management and the Tax Commissioner. They would be the ones to weight that and decide. The question I asked during the testimony was a broader question getting at the same issue. The Constitution is we keep hearing a limited document; it's a document that lays forth principle and doesn't legislate, the skeleton. The statues, the Century Code, the laws we pass are the meat in the bone. We keep cluttering the Constitution with all of this stuff that most Constitutional and legal scholars I think would look at and say it doesn't belong in the Constitution it belongs in a law.

Vice Chairman Larry Klemin: A suggestion on the language is if we took something out of 4006 and said "if determined whether the proposed amendment would make a direct appropriation of public funds for a specific purpose". That would combine the jest of what is in 4006 with what's in this amendment. The Attorney General shall review the proposed amendment to determine whether the proposed amendment would make a direct appropriation of public funds for a specific purpose or require the Legislative assembly to appropriate funds for a specific purpose or would prevent the Legislative assembly from fulfilling a Constitutionally function. If the Attorney General determines that the purposed amendment would make a direct appropriation this way.

Rep. Karen Karls: Where would the three member committee come in?

Vice Chairman Larry Klemin: It would not be in there.

Chairman Kim Koppelman: Another way would be a prohibition in the Constitution against an initiated Constitutional measure appropriating funds or requiring the Legislature to do so. Then how do you deal with that if one of those comes forward. Unless you decide to give the Secretary of State the authority to do that, they would then decide to put it on the ballot or not. But that would be putting somebody in charge of that. The Secretary of State already has an obligation relative to these amendments.

Vice Chairman Larry Klemin: It could be up to the Supreme Court too. Section 7 article 3 - all decisions of the Secretary of State in the petition process are subject to review by the Supreme Court in the exercise of original jurisdiction. If it goes to the Attorney General and the Attorney General says no then the Secretary of State says you cannot circulate the petition because of this provision that would then be subject to review by the Supreme Court as an exercise of original jurisdiction. It would directly to the Supreme Court not to a district court first.

Chairman Kim Koppelman: If the Constitution was set up this way and the statue says the Supreme Court can review, would the Constitution trump the statue by saying this is the mechanism.

Vice Chairman Larry Klemin: t's in the Constitution in the same article that we are amending. There is a process if somebody wants to take it to the Supreme Court. This is more direct than what Sen. Hogue proposed.

Chairman Kim Koppelman: How do you feel about the Legislative assembly fulfilling a Constitutional mandated function portion that's the other issue.

Rep. Nathan Toman: Have a defining line of what is in there currently, like public education, or the Legacy fund or something that is already mandated.

Vice Chairman Larry Klemin: If we take that out the mandate for the Legislature that would still get to the heart of the issue.

Rep. Nathan Toman: It would direct appropriate for a specific purpose.

Chairman Kim Koppelman: If we say you can't change a mandated Legislative function is that saying we can't change the Constitution anymore and we don't want to do that. This is on line 4 of the amendment after the word "make" you would insert some of the language from the original resolution 4006. It would read - an amendment would make a direct appropriation of public funds for a specific purpose or require the Legislative assembly to appropriate funds for a specific purpose. Then we need to alter after that.

Vice Chairman Larry Klemin: In the next sentence if the Attorney General determines that the proposed amendment would make, then the rest of that language.

Chairman Kim Koppelman: We would be deleting the rest of that sentence in the amendment and replacing it with you suggested.

Vice Chairman Larry Klemin: The whole idea is we don't want special interest groups appropriating money without going through the budget process. We could be in a situation where we would not be able to appropriate money for other purposes because I have a Constitutional mandated requirement to balance the budget.

Rep. Vicky Steiner: If someone came up with the idea for another fund similar to the Legacy fund would they be prohibited because it would be specifically setting aside money or is this money that you want to spend on your specific program?

Chairman Kim Koppelman: It's not an appropriation of funds for a specific purpose, it doesn't require the Legislature to appropriate funds for a specific purpose. So I think the answer is yes. What you could not do is what we just did with the foundation aid stabilization fund. You couldn't say this money is going to be spent for that or we are going to spend X number of dollars for education.

Rep. Lois Delmore: If it came through the Legislature we could, if it came from the public no they can't.

Chairman Kim Koppelman: The end result would be is that both the Legislature and the public would need to approve that kind of thing in the Constitution. Currently that is not the case. The Legislature could put this on the ballot but the people would still have to approve it before it became part of the Constitution. The end result for the Constitution to directly appropriate money for a specific purpose both the Legislature and the public would have to approve that. This would not infringe on the right of the people, if they wanted to make a direct appropriation of funds they could do it but through a statute. They would do it through an initiated measure that would go in the Century Code.

Rep. Gary Paur: Is this really necessary? If the present system isn't self-limiting we are required to have a balanced budget. And if somebody through an initiated petition comes up with a \$100M or \$600M we are going to have to cut back on roads or schools or raise taxes. I don't see how we could under the present system to the situation that California is in.

Chairman Kim Koppelman: The concern is I don't think it is a question of whether there is a balanced budget required because there are creative ways that some states have found to get around that through bonding and other things. Minnesota has a provision in their Constitution requiring a balanced budget but they never balance their budget, they have a big bonding bill every session whereby they borrow money in effect by bonding.

Rep. Ben Hanson: The bill if amended it would make it the general citizen would could appropriate money by initiated measure but it would only go in the Century Code. The difference being that currently it would be put in the Constitution and the fear is California and/or other states did this it was put in the Constitution for ever and ever because the Constitution is a permanent document. And this would be more changeable and the Legislature could alter the wishes of people going on the initiated ballots more?

Chairman Kim Koppelman: I think it is many faceted. What Sen. Hogue was driving at with his original resolution was that fiscal responsibility could be threatened by initiated particular from out of stated special interest. He alleges that we are seeing potentially more of that and sees that it has happened in other places. So the public could vote not really realizing what they are doing to the fiscal condition of the state. If it is in the Constitution you are right, it is less easy to change. Does that belong in the Constitution to begin with?

Rep. Kathy Hogan: I am going to oppose this because I think people of North Dakota make wise decisions. I think we saw that on measure 2 and the foundation aid stabilization fund was established at time when it was needed and I don't think this is necessary.

Vice Chairman Larry Klemin: The people should have an opportunity to make a wise decision on this proposal.

Rep. Kathy Hogan: If we had section 2 which says there are only two measures on the ballot, I think this could be buried.

Rep. Randy Boehning: Minnesota put a partial sales tax on, I don't know if that was the Constitution or if the Legislature did that for parks and recreation that is collecting tens of millions of dollars to be appropriated for specific fund.

Rep. Ben Hanson: It was Constitutional. Now they have all kinds of funds problems with it because all the iron rangers want all the money to go mining and not regulate some of their environment. All the Twin Cities people want it to be based on basically environmental regulations or parks. I don't think the general citizen's right to put something on the Constitution should be questioned as I think it is in part by this measure. You are saying you are allowing them to choose but their right to choose to appropriate shouldn't be questioned in my mind.

Vice Chairman Larry Klemin: The point was made by Chairman Koppelman that this does not prevent anyone from proposing an initiated measure to provide for an appropriation by statute.

Rep. Randy Boehning: Made a motion on proposed amendment.

Vice Chairman Larry Klemin: Second the motion.

Vice Chairman Larry Klemin: I think this provides a bright line and if the people decide they don't to do this we won't do it. At least this gives them the opportunity to determine that.

Rep. Gary Paur: Should there be a provision on which election this should be in?

Chairman Kim Koppelman: It is currently says the primary.

Rep. Bill Kretschmar: I am going to support the proposed amendment because it is better than the original bill. But I think we are infringing on the peoples right and even though the people can choose it.

Voice vote carried.

Rep. Andy Maragos: Made a do pass as amended on SCR 4006.

Rep. Randy Boehning: Second the motion.

Rep. Nathan Toman: They can still initiate a Constitutional measure just not to appropriate funds.

Vice Chairman Larry Klemin: If wanted to set up some particular fund for a specific purpose they could do that. There just wouldn't be any money it unless the Legislature appropriated funds for it.

Rep. Vicky Steiner: I agree with Rep. Kretschmar and I am going to oppose this.

Rep. Lois Delmore: We talk about the people's house and the people's money and yes it does call for them to vote and make that decision but I think we are micro-managing one of the things they are able to do now. I don't think that sits well with the populous now.

Rep. Andy Maragos: I am going to support this because I think we dodged a bullet on measure 2 but I'm not so sure we can do that again. I think it is imperative to get this on the ballot. (Inaudible).

Vote 7-7-0

Rep. Randy Boehning: Made a motion to move without committee recommendation.

Rep. Ben Hanson: Second the motion.

Vote 13-1-0

Chairman Kim Koppelman: Will carry the resolution.

April 3, 2013

VR
4/3/13

PROPOSED AMENDMENTS TO ENGROSSED
SENATE CONCURRENT RESOLUTION NO. 4006

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with "to create and enact a new section to article III of the Constitution of North Dakota, relating to approval of petitions for proposed initiated constitutional amendments by the attorney general before circulation.

STATEMENT OF INTENT

This measure would prohibit the circulation of a petition to initiate a constitutional amendment if the attorney general determines the proposed amendment would make a direct appropriation of public funds for a specific purpose or would require the legislative assembly to appropriate funds for a specific purpose.

**BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF
REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed new section to article III of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2014, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article III of the Constitution of North Dakota is created and enacted as follows:

Before the secretary of state may approve a petition to initiate a constitutional amendment, the secretary of state shall forward the proposed amendment to the attorney general for review. The attorney general shall review the proposed amendment to determine whether the proposed amendment would make a direct appropriation of public funds for a specific purpose or would require the legislative assembly to appropriate funds for a specific purpose. If the attorney general determines that the proposed amendment would make a direct appropriation of public funds for a specific purpose or would require the legislative assembly to appropriate funds for a specific purpose, the secretary of state shall notify the committee for the petitioners that the petition may not be approved for circulation."

Renumber accordingly

Date: 4-3-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SCR 4006**

House Judiciary 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. Boehning Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried

Date: 4-3-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SCR 4006**

House Judiciary 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. Maragos Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore		/
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson		/
Rep. Randy Boehning	/		Rep. Kathy Hogan		/
Rep. Roger Brabandt		/			
Rep. Karen Karls	/				
Rep. William Kretschmar		/			
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur		/			
Rep. Vicky Steiner		/			
Rep. Nathan Toman	/				

Total (Yes) 7 No 7

Absent _____

Floor Assignment _____

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

Date: 4-3-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SCR 4006

House Judiciary 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 _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/	/			
Rep. Nathan Toman	/				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Koppelman

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

Without committee recommendation

REPORT OF STANDING COMMITTEE

SCR 4006, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SCR 4006 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A concurrent resolution" replace the remainder of the resolution with "to create and enact a new section to article III of the Constitution of North Dakota, relating to approval of petitions for proposed initiated constitutional amendments by the attorney general before circulation.

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BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

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Renumber accordingly

2013 TESTIMONY

SCR 4006

1 TESTIMONY OF DAVID HOGUE IN SUPPORT OF SCR 4006

2 SENATE JUDICIARY COMMITTEE

3 JANUARY 22, 2013

4 10:30 am

5
6
7 Good Morning Madam Vice-Chair Sitte and members of the Committee. My
8 name is David Hogue. I am a North Dakota state senator representing District 38,
9 which includes northwest Minot and the city of Burlington. I appear before your
10 committee to seek support for SCR 4006.

11 Article III of our state constitution permits enactment of laws through the initiated
12 measure process. SCR 4006 provides for limited legislative review of certain initiated
13 measures approved by the voters of North Dakota. SCR 4006 relates to how we as
14 North Dakotans will govern ourselves. There are fourteen states that permit statutory
15 initiated measures and 17 states that permit constitutional initiated measures.

16 SCR 4006 would change the process for certain initiated measures proposed in
17 the state of North Dakota. Specifically, any measure with a fiscal impact or one that
18 would require an appropriation of \$ 40 million or more in any biennium would be subject
19 to limited legislative review. The fiscal impact would be determined by the majority of
20 the state tax commissioner, the director of the office of management and budget, and
21 the chairman of the legislative management.

22 If the measure with the fiscal impact is approved by the voters, and if there is a
23 fiscal impact of \$40 million or more, then each house of the legislative assembly must

1 review the measure within the first 31 days of the regular legislative assembly. Neither
2 house can amend the measure. Each house must give an up or down vote on the
3 measure. The measure becomes law if 40% from each house vote to approve the
4 measure.

5 The \$40 million threshold is placed within the state constitution. Therefore,
6 subsection 4 of Section 2 of SCR 4006 provides for an inflationary increase of the
7 threshold over time. The measure will track with consumer price index announced by
8 the federal Bureau of Labor Statistics.

9 I point directly to the history of the state of California, and North Dakota's recent
10 history with initiated measures for my reasons for advocating this measure. There are
11 several learned people who have concluded that California's once booming economy
12 was crippled by the initiated measure process that California is now burdened with.

13 Back in its prime, the state of California's gross domestic product exceeded all
14 but a handful of countries. California is now 335 billion in debt and struggles to pay its
15 operational expenses. The Wall Street Journal recently featured an article on a chain of
16 convenience stores that will not accept state issued credit cards used by California
17 Highway Patrolman because the state of California doesn't pay its bills on time.

18 When California was highly prosperous and enjoying budget surpluses, there
19 were lots of special interest groups that held grand ideas about how to spend state
20 revenues. Initiated measures proliferated in California. There were several elections in
21 which competing and conflicting measures were proposed. Many of the measures were
22 defeated but some passed.

1 In last year's November election, there were 12 measures on the California state
2 ballot. There were two conflicting measures about higher taxes on high income
3 earners. One measure that passed that completely bypassed the California Legislature
4 is a measure to impose higher taxes on top income earners and appropriate the money
5 to California's public education system.

6 John Diaz, a learned observer of California's system writes: "Today, the initiative
7 process is no longer the antidote to special interests and the moneyed class; it is their
8 vehicle of choice to attempt to get their way without having to endure the scrutiny and
9 compromise of the legislative process."

10 As North Dakota's Legacy Fund grows and economic prosperity continues, I
11 predict the number of initiated measures will grow too. This is not a wild eyed,
12 speculative prediction. Compare the number of new spending proposals that have
13 come to the legislature in the past three sessions with the number of spending
14 proposals presented before our recent boom.

15 SCR 4006 does not require more ballot signatures nor does it dictate
16 which counties petition signatures must come from. SCR 4006 focuses specifically on
17 the merits of the measure adopted by the people. That, in my judgment, is where our
18 reform eyes should look.

19 I have given previous testimony that the process of writing state budgets and
20 making difficult spending decisions does not lend itself to the initiated measure process.
21 Because of the requirement that we balance our state budget, every dollar of spending
22 affects revenues, and vice versa. In short, we cannot make spending or taxing

1 decisions in a vacuum, free of the spirit of compromise that so often does and should
2 prevail in spending and taxing measures.

3 Madam Vice-Chair Sitte and committee members, I'm happy to stand for your
4 questions.

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1 TESTIMONY OF DAVID HOGUE IN SUPPORT OF SCR 4006

2 HOUSE JUDICIARY COMMITTEE

3 MARCH 27, 2013

4 9:40 am

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6
7 Good Morning Chairman Koppleman and members of the House Judiciary
8 Committee. My name is David Hogue. I am a North Dakota state senator representing
9 District 38, which includes northwest Minot and the city of Burlington. I appear before
10 your committee to seek support for SCR 4006.

11 Article III of our state constitution permits enactment of laws through the initiated
12 measure process. SCR 4006 provides for limited legislative review of certain initiated
13 measures approved by the voters of North Dakota. SCR 4006 relates to how we as
14 North Dakotans will govern ourselves. There are fourteen states that permit statutory
15 initiated measures and 17 states that permit constitutional initiated measures.

16 SCR 4006 would change the process for certain initiated measures proposed in
17 the state of North Dakota. Specifically, any measure with a fiscal impact or one that
18 would require an appropriation of \$ 50 million or more in any biennium would be subject
19 to limited legislative review. The fiscal impact would be determined by the majority of
20 the state tax commissioner, the director of the office of management and budget, and
21 the chairman of the legislative management.

22 If the measure with the fiscal impact is approved by the voters, and if there is a
23 fiscal impact of \$50 million or more, then each house of the legislative assembly must

1 review the measure within the first 31 days of the regular legislative assembly. Neither
2 house can amend the measure. Each house must give an up or down vote on the
3 measure. The measure becomes law if 40% from each house vote to approve the
4 measure.

5 The \$50 million threshold is placed within the state constitution. Therefore,
6 subsection 4 of Section 2 of SCR 4006 provides for an inflationary increase of the
7 threshold over time. The measure will track with consumer price index announced by
8 the federal Bureau of Labor Statistics.

9 I point directly to the history of the state of California, and North Dakota's recent
10 history with initiated measures for my reasons for advocating this measure. There are
11 several learned people who have concluded that California's once booming economy
12 was crippled by the initiated measure process that California is now burdened with.

13 Back in its prime, the state of California's gross domestic product exceeded all
14 but a handful of countries. California is now 335 billion in debt and struggles to pay its
15 operational expenses. The Wall Street Journal recently featured an article on a chain of
16 convenience stores that will not accept state issued credit cards used by California
17 Highway Patrolman because the state of California doesn't pay its bills on time.

18 When California was highly prosperous and enjoying budget surpluses, there
19 were lots of special interest groups that held grand ideas about how to spend state
20 revenues. Initiated measures proliferated in California. There were several elections in
21 which competing and conflicting measures were proposed. Many of the measures were
22 defeated but some passed.

1 In last year's November election, there were 12 measures on the California state
2 ballot. There were two conflicting measures about higher taxes on high income
3 earners. One measure that passed that completely bypassed the California Legislature
4 is a measure to impose higher taxes on top income earners and appropriate the money
5 to California's public education system.

6 John Diaz, a learned observer of California's system writes: "Today, the initiative
7 process is no longer the antidote to special interests and the moneyed class; it is their
8 vehicle of choice to attempt to get their way without having to endure the scrutiny and
9 compromise of the legislative process."

10 As North Dakota's Legacy Fund grows and economic prosperity continues, I
11 predict the number of initiated measures will grow too. This is not a wild eyed,
12 speculative prediction. Compare the number of new spending proposals that have
13 come to the legislature in the past three sessions with the number of spending
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3 Chair Koppleman and committee members, I'm happy to stand for your
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April 3, 2013

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT RESOLUTION NO.
4006

Page 1, line 1, after "A concurrent" replace the remainder of the concurrent with "resolution to create and enact a new section to article III of the Constitution of North Dakota, relating to approval of petitions for proposed initiated constitutional amendments by the attorney general before circulation.

STATEMENT OF INTENT

This measure would prohibit the circulation of a petition to initiate a constitutional amendment if the attorney general determines the proposed amendment would appropriate public funds or conflict with a constitutionally mandated function of the legislative assembly.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF

REPRESENTATIVES CONCURRING THEREIN:

That the following proposed new section to article III of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2014, in accordance with section 16 of article IV of the Constitution of North Dakota. **SECTION 1.** A new section to article III of the Constitution of North Dakota is created and enacted as follows:

Before the secretary of state may approve a petition to initiate a constitutional amendment, the secretary of state shall forward the proposed amendment to the attorney general for review. The attorney general shall review the proposed amendment to determine whether the proposed amendment would make ~~an~~ a direct appropriation of public funds for a specific purpose or would ~~prevent~~ require the legislative assembly from fulfilling a constitutionally mandated function to appropriate funds for a specific purpose. If the attorney general determines that the proposed amendment would make ~~an~~ a direct appropriation of public funds for a specific purpose or would ~~prevent~~ require the legislative assembly from fulfilling a constitutionally mandated function to appropriate funds for a specific purpose, the attorney general shall notify the secretary of state shall notify the committee for the petitioners that the petition may not be approved for circulation."

Renumber accordingly