

2019 HOUSE JUDICIARY

HCR 3016

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HCR 3016
2/27/2019
32921

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to the names, locations, and missions of the institutions of higher education.

Minutes:

1,2,3

Chairman Koppelman: Opened the hearing on HCR 3016.

Rep. Rick Becker: (Attachment #1) Went through testimony and the resolution. There are three reasons why we need to pass this bill. 1. It is unconstitutional for this legislature to appropriate monies to Bismarck State College, Williston State College or Lake Regions. They are not one of the named institutions. I requested an opinion from the Attorney General and that is what I handed out to you. 2. CIP Family category that are not also offered by any of the one or more of the eight named institutions. So there is no doubt they are of similar character. Otherwise it is unconstitutional. Now we are trying to figure out what to do about higher education. It is abundantly clear that we are at a crossroads. Enrollment is going to decrease. The two large institutions have more Minnesota residents than they have North Dakota residents. Minnesota's enrollment is also dramatically decreasing over the next decade. We will have a double problem because we have relied so much on Minnesota. We are also trying to figure out how to stay on top with online learning. We are hamstrung by the phasing in the constitution. Because it says what the missions are and it says what the locations are and the names are. We can only be innovative if we are just teetering on the edge. 3. The possibility of closure of an institution is the other possibility. If we are going to discuss this, we need to look down the road and how we are going to be proactive rather than reactive. By removing the named institutions, we are no longer contrary to the constitution in appropriating monies to the three and it allows us to actually be serious about innovation instead of just giving lip service. If we need to change a mission later on to a different state run system so we can keep the community healthy, but it is just no longer going to be specifically for that type of higher education or maybe higher education at all.

Rep. McWilliams: You mentioned in 1997 this was on the ballot. Do you have any idea what the projected enrollment was at that time and what the outlook was?

Rep. Rick Becker: I do not. The resolution was passed in 97 and went to a vote of the people in 98.

Rep. McWilliams: What happened when Ellendale was removed?

Rep. Rick Becker: Most of this research was done a year ago or so. I have it in my pdf files and I can find it for you. I think basically there was a fire and it was not a viable option to continue with that institution.

Representative Simons: In those meetings did they talk about trade schools? Are they affected as well? Some of these colleges could turn into trade schools?

Rep. Rick Becker: Across the country there was not a discussion about trade schools. Trade school population is going up. We need to be able to adapt and take this out of the constitution.

Rep. McWilliams: Why not just change the constitution and leave the names in there versus taking them out?

Rep. Rick Becker: When you have a problem of these three institutions that I mentioned; if we try to adapt and say OK we are going to keep these here; there is no other benefit to doing that but we could do that.

Rep. Jones: One page 2, line 22; I like the cleanup you are doing, but should we somewhere look at an amendment that allow for several trade schools. Not to be named any specific place but I know there is a movement around the nation to actually facilitate more of the trades.

Rep. Rick Becker: If we take the named institutions out there is no longer a need to find a way to add trade schools because we are no longer named and we can have what you need where you need it how you need.

Rep. McWilliams: If this was taken out of the constitutions; would these lands still be sold or how would that be addressed and would that still be protected?

Rep. Rick Becker: No that would not change. There is no need to have those in the constitution any longer.

Chairman K. Koppelman: I noticed some of the word changes from the soldier's home and I assume they are legislative updates to the current language. Is that correct?

Rep. Rick Becker: Yes I believe the changes as of 1997.

Opposition:

Andrew Alexis Varvel: Bismarck resident. (Attachment #2) (20:45-27:25) Went over his testimony and proposed amendment.

Rep. Jones: Which field would you add?

Andrew Varvel: One is aviation and another is fine arts. Under the present language I do not think there was nursing or business and vocational training. That would be a good idea.

Chairman K. Koppelman: This amendment would create an elected position of commissioner of higher education and do away with the board of higher education and that person would be elected. Nothing in the measure has any requirements for his or her eligibility.

Andrew Varvel: Yes that is correct.

Chairman K. Koppelman: The constitution should be basic but detail should be added through statute. Not naming all of those other disciplines in the constitution is wise. What if someday we don't teach aviation anymore?

Andrew Varvel: That might include UAV's.

Chairman K. Koppelman: What is your reasoning in doing away with the board of higher education and creating an elected versus a chancellor and creating an elected position of commissioner?

Andrew Varvel: I lost confidence in the board. Last year I was very involved in keeping the buildings of what had been the college at the UND. There was a competition between Bismarck and the UND in Grand Forks back in 1905 to try to get a Methodist College. If that Methodist College had been in Bismarck; they would have had a major university over a half century over the University of Mary. I grew up in Grand Forks and took lessons from the late Elizabeth Lewis who was the last faculty member of the Westley College Conservatory so I have a connection in that sense. I remember the buildings from infancy so I am not happy about that. Discussed the buildings that were destroyed. I was trying to be constructive in creating equilibria between higher education among other things.

Nick Archuleta, President of ND United: (Attachment #3)

Rep. Hanson: Would you agree that it is an obstacle to innovation.

Nick Archuleta: What you see going on now in the university system in state there are a lot of innovations going on in terms of Wahpeton. Now Williston State now has a welding program going on. Bismarck State College is the third largest campus in the state. We have offices here from Dickinson State and other places too which allows for more students to career enhancing courses. Our research universities are doing outstanding work.

Rep. Jones: I am confused about the statement that this is an attempt to close one or more of these institutions. How to get that from this legislation?

Nick Archuleta: I think in Rep. Becker's remarks it is clear with these named institutions where they are at; they can't be closed because they are mentioned in the Constitution. I see this as an attempt to be able to close them.

Chairman K. Koppelman: You mentioned Williston with the State College of Science and they also have programs in Fargo and they may be cooperating with NDSU on some of those. Might it be argued with the rigidity of the language in the Constitution currently that those things are unconstitutional? I don't think they have ever been challenged. I think with the mission of the institution being named in the Constitution does a college located in Wahpeton have any business doing anything in Grand Fork or Fargo or Williston or wherever else they may choose.

Nick Archuleta: By all means challenge it and see what happens. I have not read what Rep. Becker got from the Attorney General.

Chairman K. Koppelman: Over the years there has been discussion along these lines. Are the missions still current? There have been arguments about getting rid of the missions and leaving the locations. Some of these smaller colleges in the state do have a concern about their college being closed. Maybe innovation might be wise.

Nick Archuleta: Perhaps. We should address a specific institution; like Valley City. If we thought the mission wasn't in keeping with where ND is going, then let's talk about that institution here and bring that to a vote of the people and see what they have to say about it.

Chairman K. Koppelman: Several different versus one?

Rep. McWilliams: Do you know the difference between a normal school and state colleges?

Nick Archuleta: The normal schools were established as teaching colleges. I can check that out and get back to you.

Chairman K. Koppelman: Back in the old days these use to have a standard degree which wasn't a four-year degree where people could teach with and it was a different era.

Neutral:

Mark Hagerott, Chancellor of the ND University Systems: Historically there was a lot of politicking to get colleges and university.

1. We have very large schools in the east that are affected by the population declines that Rep. Becker talked about. Minnesota is depopulating; however western ND is anticipated to grow dramatically. Population is one or two of the western ND growth. ND is one or two of the top growing states in the west. Discussed complex issues happening in Western ND.

2. Adaptation. We need to adapt and change.

3. Population may not be the determining factor. Having workforce where the people are may be more important. Thirty-five percent of the students from the west were leaving to go to school in the east; which is not good for workforce. Further allowing the board to make

adaptations while committed could upset the neat balance we have now with confidence of some of these smaller schools doing what they do.

Rep. McWilliams: In your experience have you seen any issues presented in our constitution now versus things that colleges around our state have wanted to do, but unable to pursue and react to base on what is in our constitution?

Mark Hagerott: In the four years I have been here I haven't seen any. If we would have some massive economic event this would slow down the ability to adapt. Now they are trying on the national stage to bust the electrical college. That could damage our ability to be more responsive in a weird sort of way.

Rep. McWilliams: Rep. Becker brought up in 1997 that this was on the ballot. What were the economic and educational conditions at that time and how has that changed if any?

Mark Hagerott: I was just looking at the data. ND is one of the faster growing states. We have grown about 18% in population and that puts us in the top third of the nation. We have actually declined in our percentage of middle class jobs. We are thirteenth from the bottom. Our kids feel this and families with oil rights are ok but the other ones are struggling.

Rep. McWilliams: What did the outlook say in 1997 for our in state students versus what is our outlook right now for in state students? How does out of state student impact our outlook?

Mark Hagerott: ND is one of the better educating states in America. We are also in the top third of educated people in the nation. We have a workforce shortage and people from the Red River Valley will say how many actually stay here and we tried to run the numbers and it varies between 20% to 40% of the out of state students stay here. If they are paying room and board and living in the economy and tuition, but the state is subsidizing the tuition per credit hour; but that percentage is what actually stayed here to the net investment is positive. That issue has come up as UND goes bigger and bigger on line. This online working is a big change and maybe there should be some time where there will be a time to draw a line where no more on line or out of state students. Virginia has put 66% must be in-state students.

Rep. McWilliams: With this changing educational environment. When you see our education changing do you see what is in our constitution now being a future stumbling block; and do you see this is something that should be addressed at some point in the future; but maybe not now?

Mark Hagerott: People get concerned. The Governor has some pretty big stuff rolling through your chambers. We are trying to recruit people for the fall. We are trying to recruit professors. Right now adding more deism to what is happening to higher education might not be helpful.

Rep. Rick Becker: When we talk about graduation retention afterwards. You use the figures of 20%-40%. I think it is not the 40% we use to talk about; but it is 20% at four years and more like 17%-18% at six to seven years of graduating students. Only half of students that graduate with a four-year degree within six years so therefore it is approximately 11% retention of all comers. For people that believe that higher education is about economic

development they like to inflate the numbers. My understanding is it is 20% of graduating students at four years are retained.

Mark Hagerott: We have had a couple campus's push back on that. Critical fields that we think count more than others are higher. The numbers we ran with you was within that 20% range.

Rep. Rick Becker: The 20% number is overall. We should not be using anything higher than 20%. The western part of the state is increasing as far as population. The east has 2/3 more of the overall student population and therefore the weighted factor of a decreasing enrollment in the east is going to be far more than the weighed factor of increasing enrollment in the west. So that combined with addressing something Rep. McWilliams was asking about that since 1997 till now we are bringing in and relaying much more on out of state students. So we have the east west position where the heavier student populations are being hit hardest for decreasing enrollment; we have the double whammy because our own populations are decreasing, but their populations are decreasing which is going to have them pull back on accessibility and willingness etc. to have the students go elsewhere. South Dakota is doing a last ditch run to keep their own students in state or get everyone else's students. In 1997 for every student we sent to Minnesota we were gaining just under 1 ½ Minnesota students. Now for every student we send to Minnesota we are gaining just over three Minnesota students. So year after year we have been more and more reliant on Minnesota students. How do you address the population concern?

Mark Hagerott: We want to get the Minnesota and South Dakota kids here. There is a race for workforce. There are more jobs than people. You are right we are in that battle. Our Senate and House are built on population; not geography. If you take this out of the constitution all of a suddenly the cities in the east become far more powerful. This change could have unintended consequences. They are trying to poach our people.

Chairman K. Koppelman: Do we need these missions? Are they still relative? If there was an effort to remove the missions and leave the locations that would create flexibility and adaptability and get rid of the parochial concerns.

Mark Hagerott: You have been fairly supportive.

Chairman K. Koppelman: Maybe if someone did come out and say it was a violation in the Constitution it could be challenged.

Rep. McWilliams: Is there ever a situation where NDSU could sue the state of ND because they see another institution is not holding true to their intended mission in the Constitution? Is that a situation that could ever happen?

Mark Hagerott: I don't know.

Representative Simons: What happened with DSU with the alumni; and Williston had a similar situation happen. What is the corrective? If we are representatives of the people and my people were not very happy about what happened with the horrible mess from a \$10

million in the black budget to a \$7.5 million in the red and having to get a bail out from the state. What are the corrective actions? They are not happy with the college. How do you handle that?

Mark Hagerott: I can say that they are one of the more innovative campuses with Doctor Mitzel. It is easier for a two-year school to become a politics offering a three-year bachelor applied science and the Dickinson facility supported it; so I would just say people make mistakes and it was the online thing and standards begin to slip so history and technology is full of cases like that. In general, our schools are run pretty well.

Representative Simons: When have these kinds of things happen like in Dickinson and Williston we need to be sure we are correcting these people. No one went to jail over this in Dickinson or Williston.

Mark Hagerott: The state board in the last 22 months have done three investigations of president's conduct; held up two contracts for six months so it has been intrusive and got involved in the parking lot in Williston. It was an awkward moment so when needed the state board hasn't hesitated to get down. Generally, we want the presidents to run their enterprise.

Chairman K. Koppelman: With the respect to the fear that any intention to touch the constitution would mean the closing of higher education in ND. Do you really believe the only thing keeping these institutions in existence is that they are named in the constitution?

Mark Hagerott: No, they are adaptive. No one has mentioned the constitution in meetings I have had.

Chairman K. Koppelman: Ellendale campus was sold to a private institution which brought more students into the community than the public one had so I am wondering if some of the fear is misplaced sometimes.

Mark Hagerott: A lot of people are shell shocked. They never thought we would have 18% budget cuts and 700 people gone. Right now people are coming out of that sense and it is getting better. People are feeling under pressure right now.

Chairman K. Koppelman: If the east would ever become the all-powerful population center I think we would have to move a lot of underground oil so I don't think we are able to do that so I don't think that is an issue. The electrical college is based on same representation that we have in the entire US Congress.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HCR 3016
3/4/2019
33081

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to the names, locations, and missions of the institutions of higher education.

Minutes:

Chairman Koppelman: Opened the meeting on HCR 3016. This is the one that takes the names of the higher education institutions out of the constitution. This would go on the ballot for the people to approve. We did have some feedback immediately after the hearing because I had raised the question what if we took the missions out in detail. The higher education folks said should we look at that and they did come back and said we visited with our special Assistant Attorney General and their opinion is it is meaningless to do that. I asked why is that the case? The mission was the initial purpose of that institution but there is nothing that prevents it from being embellished or expanded upon. Are all those missions still current and they said yes they are.

Discussion:

Rep. Jones: I like this idea of changing this a little bit. I understand the institutions are nervous about it. They first jump to that we are going to get rid of some of the institutions. Did a discussion on global warming and that they are doing this in higher education institutions?

Chairman K. Koppelman: I remember when I was in high school there was going to be a be another ice age. It was this winter.

Rep. Jones: Discussed global warming issues. What are we going to do as legislators about these issues?

Rep. McWilliams: I did not hear any testimony that there was any problem with the way it is; whether it is good or bad policy to leave the names of colleges in the Constitutions is a debatable point. In business sometimes doing something that doesn't solve a problem; but creates another problem at the same time by giving uncertainty into the higher education does more harm than good. I will be resisting this resolution. I think by removing them now would probably send shock waves unnecessarily into the higher education community that won't have any positive impact in what we are doing in higher education.

Do Pass Motion Made by Rep. Vetter; Seconded by Rep. Rick Becker

Discussion:

Rep. Rick Becker: There probably is not a problem now; however, if you see a problem on the horizon when you are a business you adapt and you are proactive rather than reactive and you prevent having fall out from a problem that will eventually come, but chose not to take action. The three potential problems are 1. There is an odd situation with the Constitutionality or lack thereof in funding or appropriating monies to the three institutions; 2. State board of higher education recognizes there are big changes coming and if any of these innovative solutions are going to be more then tinkering in the margins maybe we should be streamlining and going to two institutions; NDSU and UND 3. Possible closure of an institution or change of an institution. There is no talk about closing one now; but there could be. This isn't about let's just close a college.

Rep. Bob Paulson: I respectfully disagree with one of the contentions of Rep. McWilliams; which was we could take a step down approach. I think specifically the fact that they are in there precludes any kind of incremental change. I think we are potentially preventing innovation and creative thinking by having them in the constitution. I think if we removed them we would see renewed innovation that would amaze us all with how much better they will get. We need career and technical and we can't put that in any of these institutions because it is not in their constitutional definition so I see some potential good from this resolution.

Chairman K. Koppelman: Discussed closure of schools and how people will perceive this process. I don't think that is the intent of this committee or the sponsor or the legislature or anyone else. It is to provide the flexibility that has been discussed.

Representative Simons: It is tough to make these calls. It needs to be said. We had a conversation with the Chancellor after the hearing and when Rep. Becker said the national statistics of where things were going. It is actually worse than what he was originally saying. I am supporting this bill. The colleges are not going to feel this. It is going to give them that much more flexibility.

Chairman K. Koppelman: The intent is about innovation and flexibility in the future. Certainly not targeting closure of any particular institution.

Rep. Jones: Necessity is a great motivator. I don't see a down side to this.

Roll Call Vote: 8 Yes 3 No 3 Absent Carrier: Rep. Rick Becker

Closed.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HCR 3016**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Vetter Seconded By Rep. Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	-----	
Vice Chairman Karls		X	Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams		X			
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones	-----				
Rep. Satrom	-----				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 8 No 3

Absent 3

Floor Assignment Rep. Becker

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

REPORT OF STANDING COMMITTEE

HCR 3016: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (8 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HCR 3016 was placed on the Eleventh order on the calendar.

2019 SENATE EDUCATION

HCR 3016

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HCR 3016
3/18/2019
33844 (1:08:41)

- Subcommittee
 Conference Committee

Committee Clerk: Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A concurrent resolution relating to the names, locations, and missions of the institutions of higher education.

Minutes:

Att. #1-Becker; Att. #2-Hagerott; Att. #3-Van Horn; Att. #4-Varvel

Chairman Schaible: We'll open the hearing for HCR 3016. Representative Becker.

(00:27) **Representative Rick Becker, Dist 7: See Att. #1.** I am here to introduce HCR 3016. Some of you may be somewhat familiar with. I believe it is effectively the same as the amended version from 1997 which passed both chambers and was voted on by the people in 1998. It was voted down. My choice to essentially use the same bill is because it had gone through committee, had been heard, the discussion of how to do the wording and so forth, I thought it was most efficient and perhaps easiest for committees of both chambers to start with what was left off with in 1997 because the goal is the same. That goal is to remove the named institutions – the eight named institutions of higher education from the constitution. Now the reasoning for wanting to remove the names is different. It has been 22 years, eventually, and a lot has changed. A little bit of background, those eight named institutions, those all come from a time when the constitution was first created at the constitutional convention. The names of the institutions, their missions and their locations was as I have read, some of the most contentious aspects of the constitutional convention because they were such driving economic development forces, employment forces and so forth, so, it was kind of a political divying up. There have been a few changes, Minot was added. Minot was not originally in there. Ellendale was removed. Ellendale was originally in the constitution. You might ask, what is the reasoning, now? I submit to you for two reasons – the lessor of the two is what I handed out to you – that was a request for an Attorney General's opinion by me because I find it fascinating that it seems very, very clear in Article 8 section 6 and Article 9 sections 12 and 13 that things are laid out very, very clearly exactly what goes where and then at the bottom of section 16 of Article 9 it says just flat out, there can't be any other institutions besides these eight named ones that receive funding – I am obviously paraphrasing, but receive funding from the state so long as they are similar character. They are obviously of similar character. There is a Chancellor Haggerott has for instance testified about the CIP codes. There is no family of CIP code that the three unnamed institutions Bismarck State College, Williston State College, and Lake Region State College – that is

what my request for the Attorney General's opinion was is that we are appropriating money to those three and yet we are not allowed to do so by the constitution. What I am getting at is these CIP family codes for what majors are offered. There are no CIP family codes in the three unnamed institutions that aren't offered by the eight named institutions. Therefore, they are of similar character. There is no doubt about that. But, it is going to have to go through the Supreme Court if and when anyone decides to take it there. One of the aspects of wanting to remove the eight named institutions is just to get away from this potential issue – this potential constitutional crisis. You could argue let's just put those three in the constitution and that would certainly take care of this concern as well. But, I will suggest to you that that is the lessor of the two concerns. The greater of the two concerns really deals with how things have been changing with higher ed. As you all well know, there has been a technological revolution. Twenty-two years ago, there were no online courses offered. Things are so dramatically different. We have this dramatic technological change coming, we have got somewhat of an old means by which we provide education. We have a very top heavy administration. We are still very oriented to butts in the seats type of situation and obviously so because of how we do our funding. Things are changing dramatically. There is going to be a lot more online courses offered. It is going to be more difficult to get butts in the seats. On top of that, we have heard in other testimony and at the State Board of Higher Education (SBHE) meetings that enrollment is going to be decreasing year over year for at least a decade. So our students, which have been decreasing, although at a very – what is the opposite of steep – a non-steep slope. The rate of decreasing enrollment is going increase. On the eastern side of the state, that will be greatly exacerbated because Minnesota's enrollment is also decreasing year over year for the next ten years. They are already making motions to do things to try to retain students in their state. Their decreasing enrollment is going to magnify our decreasing enrollment as they pull their own students away and so, we are looking at dramatic decreasing numbers of students available for ND colleges. There has been talk and again stated in SBHE meetings that there are going to be many, many colleges closing across the nation. I don't know ND would be the one state that would never have to worry about that. What I am getting at then is there are changes coming. This bill isn't to make it so we can close a college, this bill is addressing the stone cold fact that changes are coming that certainly, we will want to streamline, have flexibility, become more efficient. We can't do any of that so long as we are hamstrung with the named institutions, their missions and their locations. We can't streamline. There have been suggestions in the past of how we could do that. The way it stands now, we can only tinker on the margins. Getting back to what I was starting to address with the idea of closing schools, this isn't to allow us to close schools, this allows us to be proactive because if schools need to be closed, we don't have control of that. It is going to be what is coming. Period. So, we can't create more students magically, so we don't have decreasing enrollments. We can't magically get future students to say that they don't want to do online courses, they don't want to have cheaper alternatives. They are going to take those. We can't stop what is coming, but we can be proactive if we take the named institutions out. We can do streamlining things like say we are going to have a two university system all the colleges fall under. NDSU or UND. I am not the expert, you guys know a lot more about this than I do, but I mean, you could do things instead of tinkering on the margin – actually make wholesale change that is going to be productive and proactive. If there comes a time that it looks like – wow – we don't have enough students – what is the lowest number of students that is acceptable and have a college open? Already, we are under 500 – is it going to be under 300? 100 students? Is there no lowest number? Will the administration outnumber the students and at that point schools close? I don't know, but I

know that changes are coming where we are going to have to look at this. If we are proactive, we can focus for what is best for the community. We can't change whether a college is going to have to be closed, but we can be proactive for the community. Ellendale – we took that institution out of the constitution and there they have a seminary college – something of that nature – it is certainly a lot better for Ellendale than just shutting down a campus, shuttering the buildings. By being proactive, we could do something like that where we privatize a school or perhaps keep the physical plant of the school open by bringing in industry and retaining the jobs if not increasing the jobs for that community. I guess what I am suggesting in closing here is that doing this allows us to be proactive which really is the best for those communities in which these colleges exist and to not do so is really just to put our heads in the sand because we can't change what is coming, that is inevitable. I'll stand for questions.

Chairman Schaible: You are trying to be farsighted and innovated and do these things. Can't we do a lot of that with the board that we have now? Can't the SBHE do that stuff now?

Rick Becker: They can do a lot of things and they have been doing a lot of things, some of them are – border on whether they are constitution or not. I don't have any specifics in mind, but I mean again if you look at the mission and location and names, you can only do the little tinkering on the margin. This last committee that was formed – we are limiting what they could do because – we are talking about big change – not – for instance, if you want to do a wholesale conversion and make some of the four-years into two-years, more technical, there is certainly a lot of direction in that realm. One could strongly argue that you just can't fully do that and retain the mission as listed in the constitution.

Chairman Schaible: With the governor's commission on higher education, and what he was trying to do that whether we agree or disagree on the governance model of what he was trying to do or what is suggested now – wasn't that kind of the mission of what they were doing is moving it into the 21st Century and the completion with online and with world competition and with all the classes that we have – wasn't that the intent of that and kind of the focus of what that was trying to do?

Rick Becker: Yes, that was the focus, but again, they are constrained with where they can take things. They are limited in their vision because they can only make any changes so long as everything stays the same as it is in the constitution.

Chairman Schaible: Even with these changes, this – your resolution that you are asking for here – even if that would pass and change, wouldn't these other things have to come in place first – or actually at least with that to actually do what we are trying to do?

Rick Becker: I guess technically, if one has to come first, it would be this one because you can't implement any changes that your innovation committees until this is out. Yes, I agree I think with the direction you are going they should happen simultaneously. This is going to be a conversation that will take a few years and in the process, we can do something like this and if there is a grand vision which is good for ND, good for the communities, good for the students it can be implemented because we are not hamstrung by something that is going to take three to four years to actually affect. So if the committee were to come up with significant changes, complete all of that, then we start the process of getting a constitutional change. I am not sure why we would do that.

Chairman Schaible: It's been mentioned that this is not to close a university or facility, but it has that perception. How do you direct that because that is what this seems to come up to? We are looking at closing ineffective universities or facilities and I always said that if that is the mission that is what it should say. Period. If you are targeting somebody, let's just target somebody and do it. The other part of it is the goal of what we have talked about – whether it is the governance or the SBHE is that you are right, it is what is best for the state of ND, what is best for the students of ND, and the mission of us and them is to make sure that whatever facilities have whatever resources we have they focus in that direction. This perception seems like we are trying to close schools.

Rick Becker: I agree with you – completely agree with you. I think that it is incumbent upon us to change that perception. What we have is the weight of the previous efforts, because the previous efforts frankly were to have the leeway to close one or more of the smaller schools – I wasn't around for the conversations, but – and the people spoke – loudly that they are not interested in that. But that was a perspective in which we had at our whim a decision – hey do we want to close them, don't we want to close them. The people spoke they don't want to close them. That was based on money and how we spend and so forth. This is different. We have the same vehicle and so we have the same perception, but it is going to be up to the legislators to change the perception because what we are looking at is a whole different ballgame. Things are changing so much. If we choose to do nothing, and let's just – if we pick a random year – ten years hence – eight years – who knows what is going to be, things are changing fast and we get down to – there are 50 students at this college. And, I am being extreme. At that point, we are going to have to do something and it is going to be too late to try and do something more positive for the community. Having this in place could allow us years to try to get industry in, to try and find a way to privatize. And that is only if it is necessary to close any. The biggest thing is being able to do wholesale change and I would love to be able to streamline our institutions of higher education and decrease the number of administration. We are so top heavy.

Chairman Schaible: With the perception of maybe trying to close schools and how hard it is to pass a resolution like any of them, what do you think the chances of actually getting the education of the real intent and to get something like this passed?

Rick Becker: It is a good question, tough question. It will be interesting because certainly, the Grand Forks Herald – it is going to be about media and how things are spun. If there are legislators or other commentators that see the value in this and they get the message out there and the media acknowledges that value, I think it has a good chance of passing. If we go back to – like for instance I alluded to the Grand Forks Herald, they put something out in an editorial and it really harkened back to the same thing that was said in 1998. That we just have to protect the towns and not let this pass. The people spoke a couple of decades ago before there was online courses and so forth. If that is going to be the narrative then it will fail, but I think we have to – I think it would be better form of governance for us to determine for you to determine whether this has value or not as opposed to determining the likelihood of passage or not and we can hopefully do due diligence to inform folks.

Senator Oban: With the train of thought of what brought this forward, why continue to name the Youth Correctional Center in Mandan, the state hospital in Jamestown, and Life Skills

and Transition Center in Grafton. Why not just sort of – if it is good for one, why isn't it good for all of them?

(17:42) **Rick Becker:** You have a good point and I believe that is how it was in '97 in its original format. Like I-

Senator Oban: The way it was introduced in the '97 session.

Rick Becker: Then when it went through the sausage making process those got put back in and I just thought I am just going to go to that point because, we can go backwards, we can – so, I don't have a problem or issue with what you've brought up.

Senator Oban: Why not completely strike the language at the end of section 13 which would actually be section 3 of the bill on page 3. Why not strike those last 2 lines that basically hamstring us moving forward to add or remove?

Rick Becker: I again agree with you wholeheartedly. It is refreshing to be able to say that. I could be wrong, but I believe in its introduced form in '97, that would have been struck. It would make sense to strike that because if – the reason to keep it is if you want to keep the Mandan and the Jamestown and so forth. Then you'd say you are going to keep that language. For me, being more of a purist, I would strike them all and I would strike that last language because those last two lines are completely unnecessary if you struck all of the institutions.

Chairman Schaible: Other questions?

Senator Davison: The three colleges that are not in here are the three technical colleges – I'll just say community colleges – Williston, Bismarck and Lake Region. My assumption is that they came afterwards and just didn't get put in here. You are talking about change in what we do and how we approach what we do with our University System and development of workforce and the changing dynamics of higher education. What would be thoughts if we amended the bill to just pull out the other two technical colleges – NDSCS and Bottineau so we would have the five technical colleges outside of the constitution and then if people wanted to or if it was appropriate maybe more align those with K12 and technical education and start moving in a different direction from a governance – trying to be more integrated in our approach to workforce and career planning with high school students excreta, apprenticeship programs – thoughts on that? Kind of piece mealing it rather than all at once.

Rick Becker: I think I agree completely with where you are going with this. Step back – the three that are not in the constitution are the community colleges or that is how they started. Over the course of – well, from the forties through the seventies, it is funny, you know we the camel's nose under the tent just a little bit. It used to be clearly understood you can't have more colleges. Then, we allowed the existence of the community colleges and they were funded by local mills. Then, we changed it so they were still funded by local mills, but they fell under the purview of SBHE. Then we gave just a little bit of funding and then a little bit more, a little bit more and then we brought them full on board because when they were community colleges funded by the locals, that was not outside of the constitution. It is when we started funding - those five – pulling out the two and so forth – all of that is exactly what I

am talking about-be innovative. To me the most logical way is just to take all of them out. You could take the two out and if you change the course offerings of all five then, so that there are no same offerings as the other six remaining named institutions in your suggestion then I suppose that would be permissible. But the easiest thing is to take all the names out, you can do that idea which is exactly what I am talking about. Someone else may have a different idea and you can do that idea because of this change in the constitution. But so long as the wording in the constitution remains as current, we can't do stuff like that.

Chairman Schaible: Seeing no other questions, thank you. Other testimony in favor of the bill? Agency testimony? If not, is there testimony in opposition to the bill?

(23:43) **Mark Hagerott, Chancellor, ND University System: See Att. #2.**

(30:01) **Chairman Schaible:** Can you address the issues of decreasing enrollment, the efficiencies of what we are doing, the size of the schools, if the school gets small enough where it is not viable – or the mission? How do we address that in our current situation?

Mark Hagerott, The interesting thing is the west is growing. Between 40 and 80 thousand new jobs are coming to the west. If we didn't have some small colleges in the west, we would have to build some. Even the governor said we might need more touch points for jobs – you can't teach welding on line. We are adapting the functions or missions – like Dickinson is going to offer more two-year programming to meet the workforce needs and as President Shirley can tell, at Bottineau, it is coming downtown and doing more and more on the Minot campus. I can see the future where Bottineau begins because of the two year programming they are offering in downtown Minot. Things could be in the constitution, but it – to your wisdom, you have a funding formula. It funds per student. It is not like the constitution says that thou shall fund the campus to this level equal to all others. It adapts with the funding flows. To Senator Davison's point to pulling all the community colleges out and lumping them together, is the reality is we now want some community colleges to do more to help students more to help students transition up. The data coming out of the Utah conference shows you actually have a very positive correlation if you can have young people coming from two year programs and then say we also offer three year bachelors or applied sciences. There is a good data stream showing success of Williston being in the middle of this epicenter, we may want them to actually become a dual mission polytechnic type college. Right now, with one single board, things are flexible enough we can do stuff and we know the constitution is out there much like the army knows the constitution is out there that is pro-Navy, but it doesn't bother anybody day to day that I can see.

Chairman Schaible: If you would fix our accreditation factor for dual credit and that kind of stuff, I would agree with you. Otherwise, I still have an issue with some of that. Other questions.

(32:54) **Senator Davison:** Currently, right now, we could just not fund Lake Region and it would go away. It is not in the constitution; we could eliminate Lake Region if we wanted to from a legislative stand point.

Chancellor Hagerott: There would be no restrictions. They do an incredible amount of work. They are one of the top 25 ranked institutions by the Almanac – Air Force programs they do, so you could do that, but they are providing a crucial function.

Senator Davison: Your last analogy, if I followed you right, is that we wouldn't want to pull the two-year colleges out because if Williston wanted to become a polytechnic institute, you feel it might restrict them, but yet, we talk about Bottineau going into Minot and we talk about Dickinson changing to offer two year degrees. Why couldn't Dickinson go into Williston and offer the four-year degree? Why does Williston have to do it by itself?

Chancellor Hagerott: Mayville right now offers a four-year program on the Williston campus. Dickinson has an online program. You are right, they are adapting, they are helping, so-

Senator Davison: How would it be restricting then?

Chancellor Hagerott: I was just responding to what the Representative Becker said that if you broke some of them out, they would align more to K12, less the other side. So I am afraid if you are building a barrier then, of students that want to continue on into a four-year curriculum if now they are in a career tech ed. K12 and not in a unified board, you might start to build a barrier unnecessarily so. Again, I would have to hear more about your proposal to fully understand it.

Senator Davison: Again, it wouldn't necessarily be my proposal, it would be what could come of some focus and some innovation about changes and how we look and integrate our higher education. My question is we are out and this bill passes and we are out in November 2020, January 1, 2021, if this bill passes, what changes?

Chancellor Hagerott: Well, my understanding, nothing would change. It is part of my argument of why make the effort right now that I believe I heard Representative Becker saying, if the day comes where we have a depopulation of an area, depopulation of a school so there is more staff than there are students, then you would have one less impediment to close it. I think-

Senator Davison: So you would have more flexibility – right? That is what he was getting to, you would have the flexibility to make decisions from a legislative standpoint. Correct?

Chancellor Hagerott: Right. It would be one less impediment for institutions.

Senator Davison: But nothing would change as far as the colleges would go as far as the colleges would go.

Chancellor Hagerott: As long as the legislature wanted to keep funding them, yes and the board wanted to support it.

Chairman Schaible: Thank you. Other testimony in opposition to the bill.

(36:12) **Brian Van Horn, President, Mayville State University: See Att. #3.**

(46:46) **Chairman Schaible:** What are your enrollment numbers right now?

Brian Van Horn: We were at 1184 – an all-time record enrollment in the fall and our spring numbers are an all-time record enrollment right around that 1200 mark.

Chairman Schaible: How many of those are online?

Brian Van Horn: We are about 55-45 – roughly 50-50 because it will depend on every semester both of online. Our nursing program that I mentioned is indeed an online degree because all of those individuals are working full time elsewhere.

Chairman Schaible: Other questions? Thank you.

Senator Davison: I will ask you the same question – on January 1, 2021 if this passed, what would change?

Brian Van Horn: I don't have the crystal ball to be able to answer that with certainty, but let me tell you what I fear if this bill passes happens between now and 2021. It puts fear in our consumers, and I mentioned that to you. I believe we are doing a really fine job of educating our workforce, producing leaders of tomorrow right now. If – I have two young children – they are 14 and 8, to be exact. I want my young children to go to Mayville State University because I know the niche market we serve in terms of personal service. It is that hand on the shoulder helping lead a student through their academic progression. I worry that those kind of students might choose to look at other institutions within our state or outside of our state which is what I heard from those seventeen students that I told you about.

Senator Davison: Those students are going to know that Mayville State came out of the constitution?

Brian Van Horn: I think it would be very public in the –

Senator Davison: It is right with NDSU and UND – it is not like it is the only one that we have pulled out of there.

Brian Van Horn: Correct, but I have talked to several people – I was not here, sir, in 1997-1998, but I understand this really eats up the front page of most journals and literature and newspapers during that time, so my presumption would be it would at least be a concern because in the last two-weeks since this passed through the House, I have received probably a hundred plus calls asking about that and this is very early in the stages. Clearly, the population is at least in tune to what is happening.

Senator Davison: How many people live in your dorms?

Brian Van Horn: Our dorm occupancy was at 98%. The actual number – capacity is 306 and we were just shy of 300.

Senator Davison: Just shy of 300.

Brian Van Horn: And I would like to share, if I may, one additional thing that might be of interest to the committee. One of the things that I am really happy about – online education and I am a proponent and have run online programs for years is very impactful, but there is still a place for residential experiences – college experiences for students. Our residential enrollment has gone up at Mayville State University as has our online. They are kind of growing together and I think that is a really positive trend.

Chairman Schaible: Thank you. Other testimony in opposition to the bill.

(50:36) **Andrew Alexis Varvel, citizen living in Dist 47: See Att. #4.**

(54:04) **Chairman Schaible:** Seeing no questions, thank you.

(54:35) **Representative Rick Holman, Dist 20:** My opposition comes from having gone through this experience. I worked on it, I wasn't in the legislature in '97, but I worked on the opposition to this similar – probably not exactly the same, but a similar thing. It was here in the legislature that I believe in 2013 and I also worked with a committee on it that time. It didn't get past the legislature and my hope is that it won't get passed the legislature again this time because I think it is counterproductive to what we hope higher ed. to be doing. Little bit of history, colleges were set up and established in locations to provide the workforce and job training for the people of ND. One of the somewhat interesting factors is that when they got together and decided to put the state prison and they decided to where to put the university, Bismarck took the state prison because it had more jobs. Things have changed a little bit there. Now whether that is true or not – but I think there is some facts to that if you are looking at 1889. The whole state was different. The state is different now, too, in that it has been growing and we have workforce needs. That is what our colleges do – they train workforce of all kinds. This measure, as before – in '97 and '13, was seen as an attack by people that wanted to create efficiencies by saying we don't need all those schools. We have changed our workforce in the last 50 years tremendously. My dad ran a farm, my mom stayed home and raised the kids. My three children all have both spouses working. That is a different world. If one wants to change careers, which is another part of our workforce training, because people do change careers and need retraining. If it requires one person to move, that is not a good deal. By having access to higher education within a distance that is workable, one person can continue working and the other person can continue with their training – whether it be online or as an old timer, which I am I like face to face learning, too. I think there is a value. My son did an online Master's degree – not from a ND school because we didn't have the Library Master's degree program in ND. He took it from Kansas and what they did is they found 14 people from four states who would drive to Fargo once a month. The rest of the time was all online and it worked – a combination of both. Those fourteen people – they all got together once a month, so they actually got to learn one another. Also, I think it is important to address higher ed. has changed. I worked in higher ed. I spent – part time and full time, probably about 24 years working in higher ed. What happened while I was working is that I saw the colleges work together and one of the programs I worked with was a statewide program training teachers. Who did we work with? In Mayville, we got our Master's degree – the people in our program got their Master's credit and some got Master's degrees from Minot State. Another program I worked on worked closely with the UND. There is a professor in Mayville right now – a couple of professors I can think of in the science area that are working with NDSU, so the collaboration between colleges. The nursing program

that Dr. Van Horn just alluded to works with several colleges and other schools. We have seen that change from the time where every college had their own little island – right now, we have a true University System and yes, it could be improved. This is not an improvement. This is perceived as a threat to some. I just stand in opposition to this. I hope that the Senate – we got 32 no votes in the House – it wasn't good enough. I would love to see you get 32 votes in the Senate. (Laughter) Thank you for your time.

Chairman Schaible: Seeing no questions, thank you. Any more testimony in opposition to the bill?

(1:00:44) **Steve Shirley, President of Minot State University:** I am in my eleventh year in the ND University System – six years as president of Valley City State and now I am in my fifth year at Minot State and with that, I also serve as president of Dakota College in Bottineau. In some fashion, I have served as president for three of the eight campuses that are potentially impacted by this bill. I just want to put a little different spin on this and that is kind of the conversation as I watched the House floor speech the day this was taken up in the House, and then the week before last when I was at a legislative forum in Minot. Some of the representatives that had voted for it that morning talked about why they did. On both of those occasions the rationale by those who supported this was the issue of flexibility, about being able to allow campuses to adapt, to do things differently, to manage their campuses differently. All of those kinds of things and it was repeatedly said that is not about closing campuses. This is different than 20-years ago. I would say that this is completely about closing campuses. This the first step to being able to it and if that is what we want to do as a state, if that is what you want to do as policy makers, I think we have to be completely up front and tell the people of ND that is what it is what is about. Senator Davison to your question about what changes on January 1, 2021, my answer would be real short. The path to closing campuses begins on January 2nd. To me that is what has changed. I can never think in almost eleven years now in doing this job, I can never, ever once from a pragmatic standpoint say – gosh, if only we weren't in the constitution, I could do this differently. I have never thought that. There is nothing that I am constrained by by listed in the constitution. We have added new academic programs, we have collaborated with new campuses, we have added different student opportunity programs, we have added new distance sites, there is an awful lot of things that we are doing differently. The bill carrier, Representative Becker, mentioned how much technology has changed since 1998. Absolutely true, there is nobody here that is going to argue with that. But, I will tell you as a young junior faculty member in the University of Minnesota system I taught my first online class in the fall of 1998. I still have that syllabus. So has online education come a long ways and changed? Absolutely, but it was around twenty years ago. It didn't just pop up a year or two ago. Over the last 20-years campuses and programs and so forth have been changing and have been adding and been changing the way they deliver and so forth. I just look at this as a –really from a straight forward practical standpoint. If this is about closing campuses, which I don't know what else it could be about, then let's be upfront with the electorate. I do also worry over the next 18 months about this being the oxygen that is given to this over the next 18 months and conversations as we are out talking with prospective students and their families and donors and alums and so forth – and you talk whether or not students are going to be talking about it – well, it may not be the first thing on their radar admittedly, but I do think it will get an awful lot of media attention and I think not being – we are not being singled out – you are right, it is not just Mayville, it is not just Minot, it is not just one or two campuses, it is all eight. The

reality is UND or NDSU – there is no threat to those institutions being closed. So I think for any of those students that are maybe on the boarder, I think it really penalizes a lot of the smaller institutions.

Chairman Schaible: Questions? Your enrollments and the percentage of online.

Steve Shirley: Enrollment is 31 – a little over 3100. Percentage of purely online – 100% online – I did this data last summer; I think it was about 15%. It is like double that it is like 30% a combination there of. We have a lot of students that might take one class or two classes online and three face to face and they live right on campus and they are 25-hours a week and it is just a scheduling issue.

Senator Oban: How much of Bottineau’s mission has now moved to downtown Minot?

Steve Shirley: Bottineau’s – and just to clarify – Bottineau’s enrollment was 996 this fall – just under 1,000 students. Bottineau has added some new offerings in downtown Minot – you are exactly right. The hallmark one is the nursing program. That is a partnership with Trinity Hospital. Trinity has funded some dollars toward that program as well. Williston State for years and years served that. They pulled out of that about three or four-years ago on sort of short notice. Bottineau was turned to – they were already offering a program in Rugby and I forget where else at the time. Bottineau, to their credit, picked it up pretty quickly and started adding to the program. We also have an ambulance program there as well. But the nursing one is the big one. How many students – 80 – somewhere in that neighborhood probably.

Senator Oban: How many students are on campus in a place like Bottineau?

Steve Shirley: In a place like Bottineau – in the residence halls?

Senator Oban: Or attending courses on campus every day?

Steve Shirley: Probably 400 – 500 of that 1000 head count. I don’t have the exact data; I would have to get that for you.

Senator Oban: I remember my first session, the then Senator for that district was really begging for dollars because they had buildings that were not being maintained, and I think those are some of the concerns where when you are able to partner with maybe more established universities and have a stronger structure that way, at some point it is almost not even a partnership. It is sort of somebody taking over for them because that institution can’t survive anymore. That is okay, because I think those partnerships are good, but at some point what is the purpose of keeping something named when it can’t survive on its own? My question was just Bottineau as an example because when we are responsible for funding it and now we are – in my opinion – stretching those dollars as far as they can go across as many institutions as we are required to fund, plus some additional ones that aren’t named, is that in the best interest of the state and the institutions?

Steve Shirley: I think that is a fair – I think that is my point that – that is then what the conversation should really revolve around – of this whole this HCR 3016. This really should be – look, we as a legislative body have decided we maybe are stretched too thin. Maybe

eleven sites are too many in ND in 2019. This is our path to start that process of beginning – then I think that is a fair conversation to be had as well.

Chairman Schaible: Other testimony in opposition to the bill? Seeing none, we will close the hearing on HCR 3016.

2019 SENATE STANDING COMMITTEE MINUTES

Education Committee
Sheyenne River Room, State Capitol

HCR 3016
3/19/2019
33907 (9:09)

- Subcommittee
 Conference Committee

Committee Clerk: Lynn Wolf

Explanation or reason for introduction of bill/resolution:

A concurrent resolution relating to the names, locations, and missions of the institutions of higher education.

Minutes:

Att. #1-Davison

Chairman Schaible: Committee will look at HCR 3016.

Senator Rust: I am going to hand out an amendment 19.3080.01001. I am going to be as transparent as possible with my intentions here. I think in regards to higher education that we passed out of here a bill that increases the board to fifteen members. I think having one resolution on the ballot in 2020 in regards to higher education is enough, personally. To see where that comes – if it gets out of the legislature – to see where that goes. Coming back to 3016, when I signed on to the bill, it was never my intention to close colleges based on funding and I understand why that comes across that way. My amendment that I want to put forward is to put back really what it does, it takes out Bottineau and NDSCS out of the constitution so that all five community colleges would be out of the constitution and it would allow us as the legislature to determine – have more flexibility from a governance standpoint how we want to align our community colleges in the state. It puts back in the other colleges and removes the overstrike for the other colleges and I would like to adopt the amendment and then I would like to kill the bill. I will carry it on the floor, but my intention would be that God willing with my health and everything, that I would be back here in 2021 and then if we didn't raise the number to fifteen, that I would bring this bill forward in 2021 with just Bottineau and Wahpeton pulled out of the constitution. **I move 19.3080.01001. on HCR 3016.**

Senator Oban: Second.

Chairman Schaible: Discussion on the amendment.

Senator Davison: It removes Bottineau and NDSCS out of the constitution. Currently, Bismarck State College, Lake Region and Williston are not in the constitution.

Roll Call Vote: 7 Yeas; 0 Nays; 0 Absent.

Amendment is adopted.

Motion by Davison, second by Rust to Do Not Pass on the amended HCR 3016.

Roll Call Vote: 7 yeas; 0 Nays; 0 Absent.

Motion carries with a Do Not Pass recommendation.

Senator Davison will carry the bill.

82
3/19,
185

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3016

- Page 1, line 6, after "education" insert "in Bottineau and Wahpeton"
 - Page 1, line 17, remove the overstrike over "~~following~~"
 - Page 1, line 17, remove the overstrike over the colon
 - Page 1, remove the overstrike over lines 18 through 20
 - Page 1, line 21, remove the overstrike over "~~e.~~"
 - Page 1, line 22, remove the overstrike over "~~The state normal schools and teachers colleges, at Valley City, Mayville, Minot,~~"
 - Page 1, remove the overstrike over line 23
 - Page 2, line 1, after "f." insert "d."
 - Page 2, line 1, remove the overstrike over "~~And such other state institutions~~"
 - Page 2, line 1, remove the overstrike over "~~as may hereafter be~~"
 - Page 2, line 2, remove the overstrike over "~~established~~"
 - Page 2, line 11, remove the overstrike over "~~The state university and the school of mines at the city of Grand Forks, in the county~~"
 - Page 2, remove the overstrike over lines 12 through 19
 - Page 2, line 20, remove the overstrike over "~~5.~~"
 - page 2, line 22, remove the overstrike over "~~6.~~"
 - Page 2, line 23, remove "3."
 - Page 2, remove the overstrike over lines 25 through 28
 - Page 2, line 29, remove the overstrike over "~~8.~~"
 - Page 2, line 29, remove "4."
 - Page 3, line 3, replace "5." with "9."
 - Page 3, line 24, remove the overstrike over "~~A state college at the city of Minot in the county of Ward.~~"
 - Page 3, line 25, after "~~6.~~" insert "4."
 - Page 3, line 25, remove the overstrike over "~~A state college at the city of Dickinson in the county of Stark.~~"
 - Page 3, line 26, after "~~7.~~" insert "5."
- Re-number accordingly

Date: 3-19-19
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3016

Senate Education Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Davison Seconded By Rust

Senators	Yes	No	Senators	Yes	No
Chairman Schaible:	✓		Senator Marcellais:	✓	
Vice-Chairman Fors:	✓		Senator Oban:	✓	
Senator Davison	✓				
Senator Elkin:	✓				
Senator Rust:	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Davison

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

REPORT OF STANDING COMMITTEE

HCR 3016: Education Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3016 was placed on the Sixth order on the calendar.

Page 1, line 6, after "education" insert "in Bottineau and Wahpeton"

Page 1, line 17, remove the overstrike over "following"

Page 1, line 17, remove the overstrike over the colon

Page 1, remove the overstrike over lines 18 through 20

Page 1, line 21, remove the overstrike over "e."

Page 1, line 22, remove the overstrike over "~~The state normal schools and teachers colleges, at Valley City, Mayville, Minot,~~"

Page 1, remove the overstrike over line 23

Page 2, line 1, after "f." insert "d."

Page 2, line 1, remove the overstrike over "~~And such other state institutions~~"

Page 2, line 1, remove the overstrike over "~~as may hereafter be~~"

Page 2, line 2, remove the overstrike over "established"

Page 2, line 11, remove the overstrike over "~~The state university and the school of mines at the city of Grand Forks, in the county~~"

Page 2, remove the overstrike over lines 12 through 19

Page 2, line 20, remove the overstrike over "5."

page 2, line 22, remove the overstrike over "6."

Page 2, line 23, remove "3."

Page 2, remove the overstrike over lines 25 through 28

Page 2, line 29, remove the overstrike over "8."

Page 2, line 29, remove "4."

Page 3, line 3, replace "5." with "9."

Page 3, line 24, remove the overstrike over "~~A state college at the city of Minot in the county of Ward.~~"

Page 3, line 25, after "6." insert "4."

Page 3, line 25, remove the overstrike over "~~A state college at the city of Dickinson in the county of Stark.~~"

Page 3, line 26, after "7." insert "5."

Renumber accordingly

2019 TESTIMONY

HCR 3016

#1
HCR 3016
2-27-19
P.1



North Dakota House of Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative
Rick C. Becker
District 7
6140 Ponderosa Avenue
Bismarck, ND 58503-9156

rcbecker@nd.gov

Committees:
Industry, Business and Labor
Transportation

June 18, 2018

Honorable Wayne Stenehjem
Attorney General
State Capitol
Bismarck, ND 58505

Dear Mr. Stenehjem:

Section 13 of Article IX of the Constitution of North Dakota provides the following:

The following public institutions are located as provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law:

1. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at the city of Lisbon in the county of Ransom, with a grant of forty thousand acres of land.
2. The school for the blind at the city of Grand Forks in the county of Grand Forks or at such other location as may be determined by the legislative assembly to be in the best interests of the students of such institution and the state of North Dakota.
3. A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.
4. A school of science or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton in the county of Richland, with a grant of forty thousand acres.
5. A state college at the city of Minot in the county of Ward.
6. A state college at the city of Dickinson in the county of Stark.
7. A state hospital for the mentally ill at such place within this state as shall be selected by the legislative assembly.

No other institution of a character similar to any one of those located by article IX, section 12, or this section shall be established or maintained without an amendment of this constitution.

My request for your opinion relates to institutions of higher education which are maintained by the state, but are not named in the constitution, and accordingly may be in conflict with the last sentence of Section 13, Article IX noted above.

In *State v. Taylor* 1911, 22 N.D. 362, the Attorney General brought the case due to concern that adding the institution at Minot by way of constitutional amendment rather than by Constitutional Convention was not permissible. In its opinion the supreme court addresses several aspects relevant to the questions posed in this request for opinion.

Taylor asserts that with regard to higher education, the locations clause had the greatest amount of interest at the Constitutional Convention. The opinion recognizes that the intent of what is now Section 13, Article IX, was specifically to "prevent the legislature from adding to the number of state institutions without a change being made in the Constitution to provide for an increase."

State v. Taylor also addresses and strikes down the argument for legislative precedent: "When the legislative assembly repeatedly construes or interprets a constitutional provision, such construction or interpretation should be followed by the courts, when it can be followed without doing violence to the fair meaning of the words used, in order to support the legislative action and give effect thereto, if the language construed admits of such construction." The key phrase is "without doing violence to the fair meaning of the words used". Article 13, Section IX has very clear and fair meaning to the words used. To legislate in diametric opposition is to commit "violence" to that portion of the Constitution.

The supreme court recognized that although their verdict opposed the position of the Attorney General's office, "It was highly important that the expenditures called for by the location, establishment, and maintenance of this institution should not be made without the legal right to make them being first established by appropriate proceedings and the judgment of this court, and in instituting the proceeding the Attorney General was but performing a duty imposed upon his office by law." In other words, the supreme court supported the AG bringing the case, because expenditures for the several institutions of higher education must be made only with "legal right".

Lastly, the court was very clear in the following paragraph; "Our conclusion is that the proviso was intended to prevent the legislative assembly from increasing the number of institutions, and that **its meaning is the same as though it had read that no other institution of a character similar to any one of those located by this article shall be established by the legislative assembly.**"

In a November 1984 Legislative Council memo, the court opinion in *State v. Taylor* is again recognized: "The court concluded that the proviso at the end of Section 13 which provides that no other institution of a character similar to any of those located by Sections 12 and 13 may be established or maintained without a constitutional amendment, was intended to prevent the Legislative Assembly from increasing the number of institutions."

One may pose the question pertaining to the phrase "similar character" found in Section 13, Article IX. The sentence reads as follows, "No other institution of a character similar to any one of those located by article IX, section 12, or this section shall be established or maintained without an amendment of this constitution."

If one were to determine that the institutions in question are not of similar character, they might be able to be added without Constitutional amendment. There are several arguments against this approach. The first is by precedent. The institution at Minot was added by Constitutional amendment. Had the institution at Minot not been of similar character, no Constitutional amendment would have been required, moreover, the Attorney General would not have argued that a Constitutional Convention was required to add it. The character of the institution at Minot thereby being of similar character to any of the already established institutions renders an awareness of at least a threshold of similarity which requires an amendment to establish or maintain any other institution.

If one were to ignore the Minot precedent, and interpret the "similar character" phrase in an extremely narrow sense, so as to approach a degree of "same character", they would again ignore legislative and Constitutional Convention intent to the point of causing "violence to the words employed."

Further evidence of the three institutions unnamed in the state constitution being of similar character to the eight constitutionally-named institutions is found in the document titled *NDUS Programs Completed*, dated November 2016, and published by the North Dakota University System. In this document we find that not only are the level of awards of the three institutions (1 Yr Certificate, 2 Yr Certificate, Associate Degree and Bachelor Degree) available at several of the eight named institutions, but a review of the Classification of Instructional Programs (CIP) reveals that there is no CIP Family category offered by any of the three unnamed institutions, which is not offered by one or more of the other eight. The NDUS documents describe the CIP codes as follows:

All NDUS programs are categorized by unique CIP codes. Each CIP code has a corresponding program description. The CIP code taxonomy is maintained by the National Center for Educational Statistics in the U.S. Department of Education. CIP codes consist of 47 academic categories, and each academic program is represented by a unique six digit CIP code.

Restated, every one of the academic categories found at the three unnamed institutions can be found at one or more of the eight named institutions.

Section 6, subsection 1 of Article XIII of the Constitution of North Dakota provides the following:

A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the following state educational institutions, to wit:

- a. The state university and school of mines, at Grand Forks, with their substations.
- b. The state agricultural college and experiment station, at Fargo, with their substations.
- c. The school of science, at Wahpeton.
- d. The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson.
- e. The school of forestry, at Bottineau.
- f. And such other state institutions of higher education as may hereafter be established.

One may argue that the "substation" language is a pretext for allowing additional institutions of higher education. The opposing argument is simply that a substation does not rise to the level of a state college. Merely changing the name of an institution to indicate it as a substation does not change its structure to be less than the free standing institution it is, nor does it change the degree to which it is of similar character to other institutions. An additional, and likely more compelling argument against a generous interpretation of substations is that adding institutions by way of simply branding them substations is clearly against legislative intent and intent of the Constitutional Convention.

The second question pertaining to Article VIII Section 6 arises from the following, "f. And such other state institutions of higher education as may hereafter be established." One may attempt to interpret that as license for the legislature or some other entity to add institutions, however, it only refers to institutions hereafter established. It neither restricts nor expands the method by which institutions may be established. Not having been abrogated, the restriction clearly expressed in Article IX necessarily pertains to Article VIII.

Based on the information provided above, I request your opinion on the following questions based on Section 13 of Article IX of the North Dakota Constitution:

Was the establishment of Bismarck State College, transitioned from a junior college maintained by school district levy, prohibited by the North Dakota Constitution?

Was the establishment of Lake Region State College, transitioned from a junior college maintained by school district levy, prohibited by the North Dakota Constitution?

Was the establishment of Williston State College, transitioned from a junior college maintained by school district levy, prohibited by the North Dakota Constitution?

#1
HCR 3016
2-22-19

Is the North Dakota state legislature constitutionally prohibited from maintaining Bismarck State College by way of appropriating state funds?

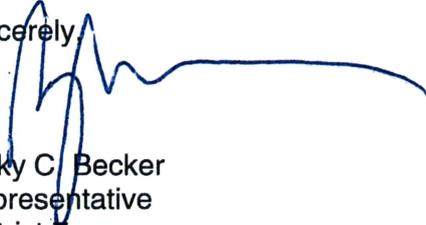
Is the North Dakota state legislature constitutionally prohibited from maintaining Lake Region State College by way of appropriating state funds?

Is the North Dakota state legislature constitutionally prohibited from maintaining Williston State College by way of appropriating state funds?

Is a constitutional amendment required to allow the state to maintain Bismarck State College, Lake Region State College, and/or Williston State College?

If a constitutional amendment is required to maintain any of the above named institutions, is it permissible for the state legislature to appropriate funds for those institutions in the short term while a constitutional amendment is sought?

Sincerely,



Ricky C. Becker
Representative
District 7
RCB/JJB

#2
HCR 3016
2-27-19
P. 1

Testimony for the House Judiciary Committee

House Concurrent Resolution 3016

Andrew Alexis Varvel

February 27, 2019

Chairman Koppelman and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

I would like to thank the sponsors of House Concurrent Resolution 3016 for bringing up the issue of names and missions in higher education. This is an important topic.

Sadly, the present language in HCR 3016 uses the same language that got rejected in a 1998 referendum. Some people say that times have changed. I disagree. One strong reason I had at the time for voting against Measure 1 was because it was incomplete, for while it would have removed place references for colleges and universities, it did not remove the constitutional requirement for the commissioner to be in Bismarck.

This is still a sticking point, for me at least.

Any constitutional amendment to reform higher education must not only be fair, but it must be seen to be fair. Otherwise, discussions over the future of higher education could easily become a “battlefield of everybody's dreams and everybody's greed”.¹

In contrast to the original language, the amendment that I am proposing would remove the constitutional status of Bismarck as not only the center of governance for higher education but also as the capital of our state. Although the North Dakota State Capitol is already built, future generations of legislators ought to have flexibility if another location becomes needed. Even so, Bismarck would gain major campus status within a unified North Dakota University. Each city must gain at least as much as it loses.

The Minot campus may gain major campus status, but it would lose its coveted autonomy. The Grand Forks and Fargo campuses would also lose autonomy, but they would gain more than they lose because regional equilibrium in higher education would mean greater social legitimacy – and financial support – for higher education in general.

¹ Page 39, my translation from the French original La Loi, by Frédéric Bastiat. <https://archive.org/details/LaLoi>

#2
HCR 3013
2-27-19
P.2

Bottineau, Devils Lake, Dickinson, Mayville, Valley City, Wahpeton, and Williston would each have its status confirmed as a minor campus of North Dakota University.

State academic missions would be listed in our Constitution, decoupled from any particular location. One problem with placing a mission in a particular location is that it can encourage a school's mission to meander. (Please don't get me started on this!)

This amendment would remove constitutional references to the Grafton State School, the North Dakota State Hospital in Jamestown, the Youth Correctional Center in Mandan, the North Dakota School for the Deaf in Devils Lake, North Dakota Vision Services in Grand Forks, and the North Dakota Veterans' Home in Lisbon.

The North Dakota School for the Deaf and North Dakota Vision Services have become statewide institutions, and the other institutions ought to follow suit if they haven't done so already. Since the North Dakota State Hospital in Jamestown is being talked about as an optimal location for a regional minimum security prison, this constitutional reform ought to work well with Governor Burgum's plans on prison space.

Higher education in North Dakota lives in the shadow of the 1989 tax referral. I remember it well. I had turned eighteen earlier that year, and this was the first time I would vote in an election. I was on a full National Merit Scholarship to the University of Houston, so I proudly voted absentee as a proud North Dakotan. Along with most people who grew up in Grand Forks, I voted yes. Most of the electorate voted no.

That vote provoked hard feelings at the time, but I saw this election as an opportunity to learn from the criticisms of "NO" voters. The "NO" vote did not come merely from a lack of money. It came from a long simmering crisis of legitimacy in higher education.

I hope that the sponsors of HCR 3016 will regard this amendment to be friendly in nature. For one thing, this amendment would remove about three pages from our state constitution. In any case, I hope that this committee adopts the reform I am proposing. Let's provide voters with an opportunity to decide on something new.

Thank you. I welcome questions from the committee.

Andrew Alexis Varvel
2630 Commons Avenue
Bismarck, ND 58503
701-255-6639
mr.a.alexis.varvel@gmail.com

#2
HCR 3014
2-27-19
P.3

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3016

- Page 1, line 1, replace "subsection 1 of" with "section 2 of article V, repeal"
- Page 1, line 1, after "VIII" insert ", create and enact section 7 of article VIII,"
- Page 1, line 1, after "and" insert "repeal"
- Page 1, line 2, replace "the names," with "state governance of higher education."
- Page 1, remove line 3
- Page 1, line 5, replace "removes references to the names, locations, and missions of" with "organizes"
- Page 1, line 6, after "education" insert "into a unified university with four major campuses and seven minor campuses under the administration of an elected commissioner."
- Page 1, line 9, replace "amendments" with "amendment"
- Page 1, line 9, replace "subsection 1 of" with "section 2 of article V, repeal"
- Page 1, line 9, after "VIII" insert ", creation of section 7 of article VIII,"
- Page 1, line 9, after "and" insert "repeal of"
- Page 1, line 11, replace "general" with "primary"
- Page 1, line 13, replace "Subsection 1 of section 6" with "Section 2"
- Page 1, line 13, replace "VIII" with "V"
- Page 1, replace lines 15 through 24 with:

"Section 2. The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, commissioner of higher education, tax commissioner, and treasurer. The legislative assembly may by law provide a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, commissioner of higher education, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law."

Page 2, replace lines 1 and 2 with:

"SECTION 2. REPEAL. Section 6 of Article VIII of the Constitution of North Dakota is repealed.

SECTION 3. Section 7 of Article VIII of the Constitution of North Dakota is created and enacted as follows:

A commissioner of higher education shall be elected on a no party ballot in the general

2
HCR 3016
2-27-19
P. 4

election to be held in 2020. If no candidate for this office has won a majority of votes during the general election, the winner shall be determined by an instant runoff. The commissioner shall take the oath of office on December 10, 2020. The state board of higher education shall dissolve on December 11, 2020, when its responsibilities shall be transferred to the commissioner of higher education.

The commissioner of higher education shall earn the same salary as the superintendent of public instruction. The commissioner shall cooperate with the superintendent to ensure smooth transitions of students from secondary education into higher education, cooperate with faculty to ensure high ethical standards and freedom of inquiry, and negotiate affiliation agreements with private colleges and tribal colleges.

The several state institutions of higher education shall be known as North Dakota University. Deans of statewide faculties shall report to the commissioner of higher education. These statewide faculties shall include but not be limited to liberal arts, engineering, education, agriculture, business, law, graduate studies, medicine, nursing, fine arts, aviation, and vocational training. North Dakota University shall have four major campuses with graduate work in Bismarck, Fargo, Grand Forks, and Minot. Its seven minor campuses shall be in Bottineau, Devils Lake, Dickinson, Mayville, Valley City, Wahpeton, and Williston.

The entire appropriation for North Dakota University shall be contained in one legislative measure. The legislative assembly shall not reduce the appropriation by the amount of any gift. The budgets and appropriation measures for experiment stations and their substations and the extension division of North Dakota University may be separate.”

Page 2, line 3, replace “2” with “4”

Page 2, line 3, replace “AMENDMENT” with “REPEAL”

Page 2, lines 4 through 31 with “repealed.”

Page 3, remove lines 1 through 5

Page 3, line 6, replace “3” with “5”

Page 3, line 6, replace “AMENDMENT” with “REPEAL”

Page 3, replace lines 7 through 29 with “repealed.”

Renumber accordingly

#2
HCR 3016
2-22-19
P. 5

19.3080.02000

MODEL FIRST ENGROSSMENT

Sixty-sixth
Legislative Assembly
of North Dakota

**ENGROSSED HOUSE CONCURRENT
RESOLUTION NO. 3016**

Introduced by

Representatives Becker, Blum, Hatlestad, Hoverson, Johnston, Marschall, M. Ruby, Satrom
Senators Bekkedahl, Davison, Meyer, Unruh

1 A concurrent resolution to amend and reenact section 2 of article V, repeal section 6 of article
2 VIII, create and enact section 7 of Article VIII, and repeal sections 12 and 13 of article IX of the
3 Constitution of North Dakota, relating to state governance of higher education.

STATEMENT OF INTENT

4
5 This measure organizes the institutions of higher education into a unified university with four
6 major campuses and seven minor campuses under the administration of an elected
7 commissioner.

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

10 That the following proposed amendment to section 2 of article V, repeal of section 6 of article
11 VIII, creation of section 7 of article VIII, and repeal of sections 12 and 13 of article IX of the
12 Constitution of North Dakota are agreed to and must be submitted to the qualified electors of
13 North Dakota at the primary election to be held in 2020, in accordance with section 16 of article
14 IV of the Constitution of North Dakota.

15 **SECTION 1. AMENDMENT.** Section 2 of article V of the Constitution of North Dakota
16 is amended and reenacted as follows:

17 **Section 2.** The qualified electors of the state at the times and places of choosing
18 members of the legislative assembly shall choose a governor, lieutenant governor, agriculture
19 commissioner, attorney general, auditor, insurance commissioner, three public service
20 commissioners, secretary of state, superintendent of public instruction, commissioner of higher
21 education, tax commissioner, and treasurer. The legislative assembly may by law provide a
22 department of labor to be administered by a public official who may be either elected or
23 appointed.

24 The powers and duties of the agriculture commissioner, attorney general auditor, insurance

#2
H.R. 3016
2-27-19
P.L.

1 commissioner, public service commissioners, secretary of state, superintendent of public
2 instruction, commissioner of higher education, tax commissioner, and treasurer must be
3 prescribed by law. If the legislative assembly establishes a labor department, the powers and
4 duties of the officer administering that department must be prescribed by law.

5 **SECTION 2. REPEAL.** Section 6 of Article VIII of the Constitution of North Dakota is
6 repealed.

7 **SECTION 3.** Section 7 of Article VIII of the Constitution of North Dakota is created and
8 enacted as follows:

9 A commissioner of higher education shall be elected on a no party ballot in the general
10 election to be held in 2020. If no candidate for this office has won a majority of votes during
11 the general election, the winner shall be determined by an instant runoff. The commissioner
12 shall take the oath of office on December 10, 2020. The state board of higher education shall
13 dissolve on December 11, 2020, when its responsibilities shall be transferred to the
14 commissioner of higher education.

15 The commissioner of higher education shall earn the same salary as the
16 superintendent of public instruction. The commissioner shall cooperate with the
17 superintendent to ensure smooth transitions of students from secondary education into higher
18 education, cooperate with faculty to ensure high ethical standards and freedom of inquiry, and
19 negotiate affiliation agreements with private colleges and tribal colleges.

20 The several state institutions of higher education shall be known as North Dakota
21 University. Deans of statewide faculties shall report to the commissioner of higher education.
22 These statewide faculties shall include but not be limited to liberal arts, engineering, education,
23 agriculture, business, law, graduate studies, medicine, nursing, fine arts, aviation, and
24 vocational training. North Dakota University shall have four major campuses with graduate
25 work in Bismarck, Fargo, Grand Forks, and Minot. Its seven minor campuses shall be in
26 Bottineau, Devils Lake, Dickinson, Mayville, Valley City, Wahpeton, and Williston.

27 The entire appropriation for North Dakota University shall be contained in one
28 legislative measure. The legislative assembly shall not reduce the appropriation by the amount
29 of any gift. The budgets and appropriation measures for experiment stations and their
30 substations and the extension division of North Dakota University may be separate.

31 **SECTION 4. REPEAL.** Section 12 of Article IX of the Constitution of North Dakota is
32 repealed.

33 **SECTION 5. REPEAL.** Section 13 of Article IX of the Constitution of North Dakota is
34 repealed.

#3
HCR 3016
2-27-19
P.1



Great Public Schools

Great Public Service

**Testimony Before the House Judiciary Committee
HCR 3016
Wednesday, February 27, 2019**

Chairman Koppleman and members of the Committee. For the record, my name is Nick Archuleta and I am president of North Dakota United. On behalf of our 11,500 members, I rise today to oppose HCR 3016.

Mr. Chairman, there are some 46,000 students from North Dakota, other parts of the United States, and from around the world who have chosen to prepare for their careers at the outstanding institutions of higher education that are part of the ND University System.

HCR 3016 represents an attempt clear the way to close one or more of these institutions. Doing so, Mr. Chairman and members of the Committee, would in the minds of many, limit the options North Dakota citizens will have to continue their education. The men and women who teach, conduct important research, and support educational practices in North Dakota's colleges and universities are providing needed public service as well as economic vitality to all areas of North Dakota. In addition, they are training and challenging the next generation of entrepreneurs, researchers, doctors, teachers, business leaders, engineers, farmers, ranchers, power plant operators, and others whose work will have lasting impacts on North Dakota and our nation.

Chairman Koppleman and members of the Committee, please return a DO NOT PASS recommendation on HCR 3016. Thank you for the opportunity to testify here today. I am happy to answer any questions.



North Dakota
House of
Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative
Rick C. Becker
District 7
6140 Ponderosa Avenue
Bismarck, ND 58503-9156

rcbecker@nd.gov

Committees:
Industry, Business and Labor
Transportation

HCR 3016
3-18-19
AH #1
p1 of 4

June 18, 2018

Honorable Wayne Stenehjem
Attorney General
State Capitol
Bismarck, ND 58505

Dear Mr. Stenehjem:

Section 13 of Article IX of the Constitution of North Dakota provides the following:

The following public institutions are located as provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law:

1. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at the city of Lisbon in the county of Ransom, with a grant of forty thousand acres of land.
2. The school for the blind at the city of Grand Forks in the county of Grand Forks or at such other location as may be determined by the legislative assembly to be in the best interests of the students of such institution and the state of North Dakota.
3. A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.
4. A school of science or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton in the county of Richland, with a grant of forty thousand acres.
5. A state college at the city of Minot in the county of Ward.
6. A state college at the city of Dickinson in the county of Stark.
7. A state hospital for the mentally ill at such place within this state as shall be selected by the legislative assembly.

No other institution of a character similar to any one of those located by article IX, section 12, or this section shall be established or maintained without an amendment of this constitution.

My request for your opinion relates to institutions of higher education which are maintained by the state, but are not named in the constitution, and accordingly may be in conflict with the last sentence of Section 13, Article IX noted above.

In *State v. Taylor* 1911, 22 N.D. 362, the Attorney General brought the case due to concern that adding the institution at Minot by way of constitutional amendment rather than by Constitutional Convention was not permissible. In it's opinion the supreme court addresses several aspects relevant to the questions posed in this request for opinion.

Taylor asserts that with regard to higher education, the locations clause had the greatest amount of interest at the Constitutional Convention. The opinion recognizes that the intent of what is now Section 13, Article IX, was specifically to "prevent the legislature from adding to the number of state institutions without a change being made in the Constitution to provide for an increase."

State v. Taylor also addresses and strikes down the argument for legislative precedent: "When the legislative assembly repeatedly construes or interprets a constitutional provision, such construction or interpretation should be followed by the courts, when it can be followed without doing violence to the fair meaning of the words used, in order to support the legislative action and give effect thereto, if the language construed admits of such construction." The key phrase is "without doing violence to the fair meaning of the words used". Article 13, Section IX has very clear and fair meaning to the words used. To legislate in diametric opposition is to commit "violence" to that portion of the Constitution.

The supreme court recognized that although their verdict opposed the position of the Attorney General's office, "It was highly important that the expenditures called for by the location, establishment, and maintenance of this institution should not be made without the legal right to make them being first established by appropriate proceedings and the judgment of this court, and in instituting the proceeding the Attorney General was but performing a duty imposed upon his office by law." In other words, the supreme court supported the AG bringing the case, because expenditures for the several institutions of higher education must be made only with "legal right".

Lastly, the court was very clear in the following paragraph; "Our conclusion is that the proviso was intended to prevent the legislative assembly from increasing the number of institutions, and that **its meaning is the same as though it had read that no other institution of a character similar to any one of those located by this article shall be established by the legislative assembly.**"

In a November 1984 Legislative Council memo, the court opinion in *State v. Taylor* is again recognized: "The court concluded that the proviso at the end of Section 13 which provides that no other institution of a character similar to any of those located by Sections 12 and 13 may be established or maintained without a constitutional amendment, was intended to prevent the Legislative Assembly from increasing the number of institutions."

One may pose the question pertaining to the phrase "similar character" found in Section 13, Article IX. The sentence reads as follows, "No other institution of a character similar to any one of those located by article IX, section 12, or this section shall be established or maintained without an amendment of this constitution."

If one were to determine that the institutions in question are not of similar character, they might be able to be added without Constitutional amendment. There are several arguments against this approach. The first is by precedent. The institution at Minot was added by Constitutional amendment. Had the institution at Minot not been of similar character, no Constitutional amendment would have been required, moreover, the Attorney General would not have argued that a Constitutional Convention was required to add it. The character of the institution at Minot thereby being of similar character to any of the already established institutions renders an awareness of at least a threshold of similarity which requires an amendment to establish or maintain any other institution.

If one were to ignore the Minot precedent, and interpret the "similar character" phrase in an extremely narrow sense, so as to approach a degree of "same character", they would again ignore legislative and Constitutional Convention intent to the point of causing "violence to the words employed."

Further evidence of the three institutions unnamed in the state constitution being of similar character to the eight constitutionally-named institutions is found in the document titled *NDUS Programs Completed*, dated November 2016, and published by the North Dakota University System. In this document we find that not only are the level of awards of the three institutions (1 Yr Certificate, 2 Yr Certificate, Associate Degree and Bachelor Degree) available at several of the eight named institutions, but a review of the Classification of Instructional Programs (CIP) reveals that there is no CIP Family category offered by any of the three unnamed institutions, which is not offered by one or more of the other eight. The NDUS documents describe the CIP codes as follows:

All NDUS programs are categorized by unique CIP codes. Each CIP code has a corresponding program description. The CIP code taxonomy is maintained by the National Center for Educational Statistics in the U.S. Department of Education. CIP codes consist of 47 academic categories, and each academic program is represented by a unique six digit CIP code.

Restated, every one of the academic categories found at the three unnamed institutions can be found at one or more of the eight named institutions.

Section 6, subsection 1 of Article XIII of the Constitution of North Dakota provides the following:

A board of higher education, to be officially known as the state board of higher education, is hereby created for the control and administration of the following state educational institutions, to wit:

- a. The state university and school of mines, at Grand Forks, with their substations.
- b. The state agricultural college and experiment station, at Fargo, with their substations.
- c. The school of science, at Wahpeton.
- d. The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson.
- e. The school of forestry, at Bottineau.
- f. And such other state institutions of higher education as may hereafter be established.

One may argue that the "substation" language is a pretext for allowing additional institutions of higher education. The opposing argument is simply that a substation does not rise to the level of a state college. Merely changing the name of an institution to indicate it as a substation does not change its structure to be less than the free standing institution it is, nor does it change the degree to which it is of similar character to other institutions. An additional, and likely more compelling argument against a generous interpretation of substations is that adding institutions by way of simply branding them substations is clearly against legislative intent and intent of the Constitutional Convention.

The second question pertaining to Article VIII Section 6 arises from the following, "f. And such other state institutions of higher education as may hereafter be established." One may attempt to interpret that as license for the legislature or some other entity to add institutions, however, it only refers to institutions hereafter established. It neither restricts nor expands the method by which institutions may be established. Not having been abrogated, the restriction clearly expressed in Article IX necessarily pertains to Article VIII.

Based on the information provided above, I request your opinion on the following questions based on Section 13 of Article IX of the North Dakota Constitution:

Was the establishment of Bismarck State College, transitioned from a junior college maintained by school district levy, prohibited by the North Dakota Constitution?

Was the establishment of Lake Region State College, transitioned from a junior college maintained by school district levy, prohibited by the North Dakota Constitution?

Was the establishment of Williston State College, transitioned from a junior college maintained by school district levy, prohibited by the North Dakota Constitution?

HCR 3016
3-18-19
AH #1

Is the North Dakota state legislature constitutionally prohibited from maintaining Bismarck State College by way of appropriating state funds?

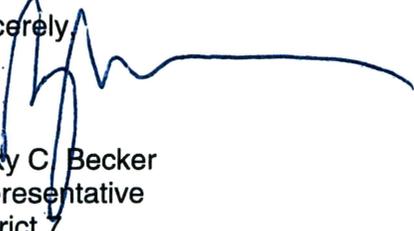
Is the North Dakota state legislature constitutionally prohibited from maintaining Lake Region State College by way of appropriating state funds?

Is the North Dakota state legislature constitutionally prohibited from maintaining Williston State College by way of appropriating state funds?

Is a constitutional amendment required to allow the state to maintain Bismarck State College, Lake Region State College, and/or Williston State College?

If a constitutional amendment is required to maintain any of the above named institutions, is it permissible for the state legislature to appropriate funds for those institutions in the short term while a constitutional amendment is sought?

Sincerely,



Ricky C. Becker
Representative
District 7
RCB/JJB

HCR3016

Senate Education

March 18, 2019

Mark Hagerott, Chancellor, NDUS

701.328.2963 | mark.hagerott@ndus.edu

Chair Schaible and Committee Members: My name is Mark Hagerott, and I am the Chancellor of the North Dakota University System. I'm here to provide testimony in opposition to House Concurring Resolution 3016.

Through the past several years, the university system has shown dynamic adaptability throughout our colleges and universities. The organization has done this in response to shifting external needs, whether to offer increased avenues to deliver course offerings, in cooperation with business and industry to adjust programs, and in collaboration with each other to increase opportunities for student success.

For instance, two of our five community colleges were ranked in the top 25 in the nation for graduation rates, and one of our research universities earning a spot among the top nationally for its online program innovations. Two of our institutions are in the process of expanding their educational models as Polytechnic and Dual Missions, and other academic and student-focused changes were achieved in topics including:

- Telemedicine;
- NDUS Transcript Exchange;
- Support for open educational resources;
- Revised program approval process; more final authorization culminating at a lower level;
- Access to an NDUS common application for admission via the K-12 education portal.

This adaptability and versatility were achieved without changes to state law. Moreover, many of the shifts were requested within the university system and at the campus level, which shows that higher education in North Dakota continues to aim for the best interests of our students and create the most opportunities possible. We believe that further discussion along the lines of removing names from the Constitution may be misperceived as a reduction in community support for these campuses. Consequently, such perceptions could discourage students, staff and faculty, ultimately causing them to look elsewhere for the educational and workforce needs.

Thank you.

HCR 3016

~~Goals~~ Purposes

- 1) Constitutionality of State Constitution
- 2) Changing of names & missions
- 3) Future of Higher Edu has changed
1997 online education was small

Cons for 3016

- 1) I'm here on behalf of Mayville State & the other state institutions in ND
- 2) Because of the way our state is structured through Universities & colleges we have good access to education
- 3) Each university served a NICHE MARKET for students. 17 students all said small university and affordability
- 4) Of the 17 students we should recognize if we don't all exist those students may end up out of state.
- 5) Students "Univ of Choice" location is a strong predictor of where they will live & work in life.
- 6) I will say we're very proud of Mayville States recruitment in ND...
62% of our students are ND &
72% stay after graduation
- 7) All state Universities & Colleges serve the ND state as workforce providers. Colleges

7) Cont

Colleges — Workforce Training & Tech Skills
Comp Regionals — Workforce Training, Leadership,
and In Demand Jobs

RI Institutions — Research, Professional, Grad Pro

* These each help fill a critical role for ND. They
complement each other not duplicate —

8) Economic Impact: Luther Memorial Home
We need life in small rural ND and
Mayville State provides that hope.
69 Million

9) This conversation hurts all Universities
& Colleges but in particular the
smaller Universities & Colleges. This
places doubt in our potential
students and hinders our ability
to meet workforce needs in ND.

Public Perception is this could close
small institutions.

From a President's perspective I feel I have
flexibility in offering what is needed
or desired by working with the
North Dakota University System.

HCR 3016
3-18-19
AH #4
P1 of 1

Testimony for the Senate Education Committee

House Concurrent Resolution 3016

Andrew Alexis Varvel

March 18, 2019

Chairman Schaible and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

Please reject House Concurrent Resolution 3016.

House Concurrent Resolution 3016 aims at higher education and it only aims at higher education. It keeps the commissioner of higher education in Bismarck, it keeps the Grafton State School, it requires the Board secretary to reside in Bismarck, it keeps the school for the deaf in Devils Lake, it keeps the youth correctional center in Mandan, it keeps the state hospital in Jamestown, it keeps the veterans' home in Lisbon, it keeps North Dakota Vision Services in Grand Forks, and last but not least – it keeps the seat of government in Bismarck.

The language in House Concurrent Resolution 3016 got overwhelmingly rejected by voters in 1998 – and for good reason. If one were truly serious about taking places and missions out of our state constitution, one would take out every place and mission reference – and not selectively target higher education for the axe.

If you would like to have fun with amending this resolution, feel free to use the language that I have sent to your email addresses, with the same language (with the typo corrected) that I presented on SCR 4016. Still, please recommend a unanimous “**DO NOT PASS**”. And please vote red on the Senate floor too.

Thank you. I welcome questions from the committee.

Andrew Alexis Varvel
2630 Commons Avenue
Bismarck, ND 58503
701-255-6639
mr.a.alexis.varvel@gmail.com

HCR 3016
3-19-19
AH #1
p. 1 of 1

19.3080.01001
Title.

Prepared by the Legislative Council staff for
Senator Davison

March 18, 2019

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3016

- Page 1, line 6, after "education" insert "in Bottineau and Wahpeton"
- Page 1, line 17, remove the overstrike over "following"
- Page 1, line 17, remove the overstrike over the colon
- Page 1, remove the overstrike over lines 18 through 20
- Page 1, line 21, remove the overstrike over "e."
- Page 1, line 22, remove the overstrike over "The state normal schools and teachers colleges, at Valley City, Mayville, Minot,"
- Page 1, remove the overstrike over line 23
- Page 2, line 1, after "f." insert "d."
- Page 2, line 1, remove the overstrike over "And such other state institutions"
- Page 2, line 1, remove the overstrike over "as may hereafter be"
- Page 2, line 2, remove the overstrike over "established"
- Page 2, line 11, remove the overstrike over "The state university and the school of mines at the city of Grand Forks, in the county"
- Page 2, remove the overstrike over lines 12 through 19
- Page 2, line 20, remove the overstrike over "5."
- page 2, line 22, remove the overstrike over "6."
- Page 2, line 23, remove "3."
- Page 2, remove the overstrike over lines 25 through 28
- Page 2, line 29, remove the overstrike over "8."
- Page 2, line 29, remove "4."
- Page 3, line 3, replace "5." with "9."
- Page 3, line 24, remove the overstrike over "A state college at the city of Minot in the county of Ward."
- Page 3, line 25, after "6." insert "4."
- Page 3, line 25, remove the overstrike over "A state college at the city of Dickinson in the county of Stark."
- Page 3, line 26, after "7." insert "5."
- Re-number accordingly