

1999 HOUSE JUDICIARY

HCR 3036


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 3036

House Judiciary Committee

Conference Committee

Hearing Date February 8, 1999

Tape Number	Side A	Side B	Meter #
2		X	9.1
Committee Clerk Signature 			

Minutes:

REP. BOUCHER Explained that he introduced this at the request of a constituent, and then presented written testimony from that party, GLEN BALTRUSH, a copy of which is attached.

SANDI TABOR (SBAND) The Bar Association is opposed to this resolution. It would drastically change the way we have been doing things in this state. Now, when you appeal an administrative order it goes to a judge for decision, not to a jury. This would be a step backwards.

COMMITTEE ACTION February 9, 1999

REP. KLEMIN moved that the committee recommend that the bill DO NOT PASS. Rep.

Maragos seconded the motion which passed on a roll call vote with 13 ayes, 2 nays and 0 absent.

Rep Klemin will carry the bill on the floor.

Date: 2/9/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3036

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Klemin Seconded By Koppelman

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓	✓	REP. KELSH		✓
REP. CLEARY	✓	✓	REP. KLEMIN	✓	
REP. DELMORE	✓	✓	REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD		✓	REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 13 No 2

Absent 0

Floor Assignment Klemin

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

REPORT OF STANDING COMMITTEE (410)
February 9, 1999 1:22 p.m.

Module No: HR-26-2339
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3036: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO NOT PASS**
(13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HCR 3036 was placed on the
Eleventh order on the calendar.

1999 TESTIMONY
HCR 3036

TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 3036

By: Glen Baltrush Date: February 8, 1999

Mr. Chairman, Members of the Judiciary Committee:

First, I wish to congratulate Representative Boucher for the introduction of House Concurrent Resolution No. 3036 before the 56th Legislative Assembly. Thank-you Representative Boucher!

Mr. Chairman, committee members, over the years "we the people" have been losing the fundamental right of "due process of law" and are required to participate in an administrative remedies process that is outside the judicial branch of state government, House Concurrent Resolution No. 3036 would guarantee "due process of law" to every person who disputes a wrongful decision or order of a governmental entity. I firmly believe the Legislative Assemblies over the years never intended for such to happen - but conceived of a simple, efficient, equitable remedy to reduce litigation. It is unfortunate that this grand body has been manipulated over the years, and not just at the state level - but federal level as well.

Mr. Chairman, committee member, it is important that you realize that this amendment would not abolish or prohibit administrative remedies processes. This amendment would guarantee that a person would not be required to participate in any process as a condition of seeking judicial review of disputes the person has with governmental entities. It would provide that if the person participates in the administrative processes, that person may seek "de novo" judicial review with a right to a jury. When we speak "de novo", that means the person may have all fact reviewed a new, not based solely on the record that any governmental entities determines as "adequate record established for the court to consider." This is like "having the inmates run the asyhum" or having the "fox guard the hen house." Neither provide effective or efficient "government for the people," only "government at the people." That's what lead many brave souls in search of a new country to get away from government at the people - oppressive government. Consider

all the brave men and women who have served and died to preserve our fundamental rights, to ensure the preservation of our great country's foundation - the Constitution and it's Bill of Rights, along with the Constitution of North Dakota.

Mr. Chairman, committee members, I suspect that you may be or are being lobbied by governmental entity personnel, along with your fellow legislators to prevent House Concurrent Resolution No. 3036 from being agreed to and placed upon the ballot for the general election to be held in 2000. I do pray that I'm wrong, but they may even testify today against this Resolution. If so, what will be stated and/or implied?

Statement: This will flood the courts with frivolous suits.

Response: No it won't do such. Undeniable there may be some, few will happen as the courts will frown upon those who attempt to do so. Also, an attorney does not wish to have their name or reputation defamed. Also, are there not frivolous suits in the courts presently or past?

Statement: This will cost the state millions of dollars.

Response: This alone tells us that the governmental entities have abused their power. If they had been accountable and properly did their job responsible, it would not cost, i.e. - take a look at sovereign immunity which is no longer in effect. It has sure cost the state millions of dollars right? Wrong?

Statement: This will create an over-burdened court system.

Response: If this creates an over-burdened court system, that also tells us that our governmental entities have not been responsible or accountable. If the courts are presently over-burdened, why are we eliminating judgeships? I also have a question - why then has there been a request for funding for an appellant court in addition to our districts courts and supreme court?

As you can see, it boils down to this: the governmental entities do not want any person allowed access to our courts, the governmental entities do not want to be held accountable for their actions, nor attempt to be made responsible for those actions, as they could not justify their actions and/or explanations, of abuse of power. All one needs to do is ask a simple question yes or not; do you believe a person should have access to the courts? If the question can not be answered with a simple yes or no, then we have a major problem. No explanations should ever be mentioned, let alone needed.

Mr. Chairman, committee members, House Concurrent Resolution 3036 has a broad base of support among North Dakotans, especially if amended as follows:

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3036

Page 1, line 21, remove the overstrike over "~~shall~~"

Page 1, line 21, remove "~~must~~"

Page 1, line 21, remove the overstrike over "~~man~~"

Page 1, line 21, remove "~~individual~~"

Page 1, line 22, remove the overstrike over "~~him in his~~"

Page 1, line 22, remove "~~to the individuals~~"

Page 1, line 24, remove the overstrike over "~~such~~"

Page 2, line 3, after the period insert "Upon a decision or order by any governmental entity that affects the person, that person may appeal to either the office of administrative hearings or proceed directly to the district court with a jury. The right of the people shall not be infringed."

Renumber accordingly

Mr. Chairman, committee members, the proposed amendments reinstate the original language of section 9 of article I of the Constitution of North Dakota on page 1, lines 21, 22, and 24. The additional language placed on page 2, line 3 gives the person real choice as it would allow matters to be promptly settled. Most important with House Concurrent Resolution No. 3036 with the amendments is the fact we now get back to accountable, responsible governmental entities, and most importantly - our fundamental rights, our constitutional right of due process of law.

Mr. Chairman, committee members, I respectfully ask for your unanimous support of the amendments and for their adoption, and with their adoption respectfully requests a unanimous "DO PASS" and is agreed to and submitted to the qualified electors of North Dakota at the general election to be held in 2000, in accordance with section 16 of article IV of the Constitution of North Dakota. This occasion has been an honor. Thank you for your time and consideration.

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3036

Page 1, line 21, remove the overstrike over "shall"

Page 1, line 21, remove "~~must~~"

Page 1, line 21, remove the overstrike over "~~man~~"

Page 1, line 21, remove "individual"

Page 1, line 22, remove the overstrike over "~~him in his~~"

Page 1, line 22, remove "to the individuals"

Page 1, line 24, remove the overstrike over "~~such~~"

Page 2, line 3, after the period insert "Upon a decision or order by any governmental entity that affects the person, that person may appeal to either the office of administrative hearings or proceed directly to the district court with a jury. The right of the people shall not be infringed."

Renumber accordingly