

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1154

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1154

Industry, Business and Labor

Conference Committee

Hearing Date Jan. 13, 1999

Tape Number	Side A	Side B	Meter #
2	x		34.4
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

HB 1154 Test the waters security offering exempt transactions.

Chairman Berg opened the hearing on the bill.

Mr. Syver Vinje, Securities Commission, provided testimony in support of the bill, test the waters feature allows people to test the market and find out if there is any interest in their investments.

(see attached written testimony)

Discussion and questions followed. There is more capital outside of ND and it will be attracted to ND easier.

Chairman Berg closed the hearing on the bill.

Moved by Representative Keiser for do pass on HB 1154, Second by Representative Brekke

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Industry, Business and Labor

Bill/Resolution Number Hb 1154

Hearing Date Jan. 13, 1999

By roll vote, 15 yes, 0 no, motion carried.

Representative Glassheim will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____ HB 1154 _____ Amendment to: _____

Requested by Legislative Council _____ Date of Request: 2-24-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

There is no fiscal impact

2. State fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: 0
- b. For the 1999-2001 biennium: 0
- c. For the 2001-03 biennium: 0

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed *Diane Lillis*

Typed Name DIANE LILLIS

Department SECURITIES 414

Phone Number 328-2910

Date Prepared: 2-24-99

Date: 1-13-98
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1154

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Keiser Seconded By Brekke

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Glassheim

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

REPORT OF STANDING COMMITTEE (410)
January 15, 1999 10:00 a.m.

Module No: HR-09-0674
Carrier: Glassheim
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1154: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1154 was placed on the Eleventh order on the calendar.

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1154

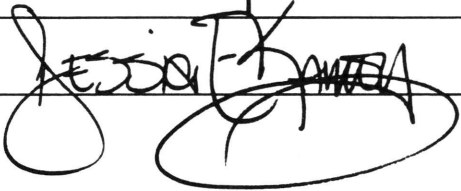
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1154

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 10, 1999

Tape Number	Side A	Side B	Meter #
1		x	2350-3030
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1154.

Syver Vinje introduced HB1154. His Testimony is included.

Senator Mutch closed the hearing on HB1154.

Committee discussion took place on March 10, 1999.

Senator Mathern motioned for a do pass committee recommendation on HB1154. Senator Klein

seconded the motion. The motion carried with a 6-0-1 vote.

Senator Klein will carry the bill.

SR444518

Date: 3/10

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
HOUSE BILL/RESOLUTION NO. 1154

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By MATHERN Seconded By KUEN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson					

Total (Yes) 6 No 0

Absent 1

Floor Assignment KUEN

REPORT OF STANDING COMMITTEE (410)
March 11, 1999 10:06 a.m.

Module No: SR-44-4518
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1154: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1154 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1154

HOUSE BILL 1154

TESTIMONY BEFORE THE HOUSE

INDUSTRY, BUSINESS AND LABOR COMMITTEE

WEDNESDAY JANUARY 13, 1999

BY: SECURITIES COMMISSIONER SYVER VINJE

Section 10-04-06(16) of the North Dakota Securities Act is commonly referred to as the "test the waters" exemption from registration. The exemption is designed for companies to solicit potential indications of interest from prospective investors and gives the company an idea as to how to structure a securities offering, all with a substantial savings of time, effort, and expense.

The current exemption provides for filing a "solicitation of interest" form and all copies of any material to be used during the solicitation period with the Securities Commissioner. There is no fee charged for this filing. The company must have a business plan. The company must also plan to either register the security or file for use of an available exemption for the offer and sale of the security. The company must obtain the approval of the commissioner prior to the commencement of the solicitation period. It must be disclosed that no money is being solicited or accepted and a prospective investor who expresses an interest is not obligated or committed to invest any money or purchase the security when offered for sale.

At present, the exemption is available only for companies that are organized in North Dakota, and whose principal place of business is in North Dakota. The amendments are patterned after the Statement of Policy on Solicitation of Interest as adopted by the North American Securities Administrators Association. The Policy has been adopted by more than thirty-five states.

Basically there are two major changes to the exemption. The first major change is that the company can be organized in any state or possession of the United States or one of the provinces or territories of Canada rather than just in North Dakota. The second major change is that the reference to the angel capital electronic network is being deleted. A separate exemption is included in House Bill 1144 that will address the offer of securities to accredited investors and will encompass the angel capital electronic network.

The rest of the changes were mainly to make the exemption easier to read and understand. On pages 5 and 6 of the bill starting with line 21 is a rewording of the legend language which must be included in any notice. This language was simplified for published notices and made to accommodate the very short time period for scripts used in television or radio advertising.

It is becoming very commonplace for proposed offerings of securities to originate in any of our neighboring states or a Canadian province, especially with the popularity of cooperatives and other joint ventures. Therefore, it is important when a company is contemplating asking North Dakota residents to be a part of the capital raising phase that it also be allowed to include North Dakota residents in the solicitation of interest phase during the initial planning of the company.

North Dakota also participates in the Midwest Regional Review Program for the review of proposed securities offerings. The Program allows an issuer to file an application simultaneously in each state where it proposes to offer and sell securities. The ten states participating in the Program are Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, North Dakota, and South Dakota. This exemption will provide a company with another avenue to determine indications of interest prior to going through the time and expense in preparing a securities offering to file in a state and then finding no interest.

TESTING THE WATERS FILINGS

<u>DATE</u>	<u>NAME OF COMPANY</u>	<u>CITY</u>
06-11-1997	CREATIVE INDUSTRIES, INC.	KENMARE
07-10-1997	EMERALD VISION STUDIOS	GRAND FORKS
08-25-1997	INVEST ACCC, INC.	BISMARCK
09-25-1997	DELARACO, L.L.C.	DEVILS LAKE
10-31-1997	ENOCH SCHULTZ CREAMERY, INC.	BISMARCK
12-29-1997	CCI, LLC	CARRINGTON
01-23-1998	IMPERIAL ENTERPRISES, INC.	BISMARCK
06-23-1998	TRAX +, L.L.C.	MINOT
08-21-1998	BDI, INC.	FARGO
09-14-1998	RPS I, L.L.C.	GRAND FORKS
09-17-1998	WINTER PARK INVESTMENTS, L.L.C.	MINOT
09-18-1998	GRAINS PROCESSING COMPANY (to be organized as a ND LLC)	WATERTOWN, SD
12-12-1998	WOOLY BOYS PRODUCTIONS, L.L.C.	FARGO

HOUSE BILL 1154
TESTIMONY BEFORE THE SENATE
INDUSTRY, BUSINESS AND LABOR COMMITTEE
WEDNESDAY FEBRUARY 10, 1999
BY: SECURITIES COMMISSIONER SYVER VINJE

Section 10-04-06(16) of the North Dakota Securities Act is commonly referred to as the "test the waters" exemption from registration. The exemption is designed for companies to solicit potential indications of interest from prospective investors and gives the company an idea as to how to structure a securities offering, all with a substantial savings of time, effort, and expense.

The current exemption provides for filing a "solicitation of interest" form and all copies of any material to be used during the solicitation period with the Securities Commissioner. There is no fee charged for this filing.

In order to qualify, the company must have a business plan. The company must also plan to either register the security or file an application for use of an available exemption for the offer and sale of the security. The company must obtain the approval of the commissioner prior to the commencement of the solicitation period. It must be disclosed that no money is being solicited or accepted and a prospective investor who expresses an interest is not obligated or committed to invest any money or purchase the security when offered for sale.

At present, the exemption is available only for companies that are organized in North Dakota, and whose principal place of business is in North Dakota. The amendments are patterned after the Statement of Policy on Solicitation of Interest as adopted by the North American Securities Administrators Association. The Policy has been adopted by more than thirty-five states.

This bill provides two major changes to the present exemption. The first major change is that the company can be organized in any state or possession of the United States or one of the provinces or territories of Canada rather than just in North Dakota. The second major change is that the reference to ACENet, sometimes known as the "Angel Capital Electronic Network," is being deleted. A separate exemption is included in House Bill 1144 that addresses the offer of securities to accredited investors and encompasses ACENet.

Other proposed changes are to make the exemption more readable and understandable. On pages 5 and 6 of the bill starting with line 21 there is a rewording of the legend language which must be included in any notice. This language was simplified for published notices and made to accommodate the very short time 30 or 60 second time period for scripts used in television or radio advertising.

It is becoming very commonplace for proposed offerings of securities to originate in any of our neighboring states or a Canadian province, especially with the popularity of cooperatives and other joint agribusiness and industrial ventures. Therefore, it is important that when a company is contemplating asking North Dakota residents to be a part of the capital raising phase that it also be allowed to include North Dakota residents in the solicitation of interest phase during the initial planning for the company.

North Dakota also participates in the Midwest Regional Review Program for the review of proposed securities offerings. The Program allows an issuer to file an application simultaneously in each state where it proposes to offer and sell securities. The ten states participating in the Program are Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, North Dakota, and South Dakota. This exemption will provide a company with another avenue to determine indications of interest prior to going through the time and expense in preparing a securities offering to file in a state and then finding inadequate investor interest.