

2001 HOUSE APPROPRIATIONS

HB 1011

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1011

House Appropriations Committee  
Government Operations Division

Conference Committee

Hearing Date January 9, 2001

Tape Number	Side A	Side B	Meter #
1/9/01 tape #1		3485 - 6222	
1/9/01 tape #2	0 - 870		
Committee Clerk Signature <i>Patricia Hall</i>			

Minutes:

The committee was called to order, and opened the hearing on HB 1011, the appropriation budget for the Securities Commissioner.

Syver Vinje: North Dakota Securities Commissioner. Had prepared testimony. The Securities Commissioner administers and enforces the following chapters of the NDCC - Chapter 10-04 (Securities Act of 1951), Chapter 51-19 (Franchise Investment Law), Chapter 51-23 (Commodities Act), and Chapter 43-10.1 (Pre-need Funeral Services Contracts). The office exists to protect North Dakota investors. This is a lot for 8 persons to do. The Securities Commissioner regulates the offer and sale of securities and franchises within ND. The jurisdiction extends past the ND borders and encompasses all activity directed toward ND residents. Statutes require registration of all securities and franchises offered for sale in ND. All persons who act as brokers, dealers, and agents for the sale of securities in ND must be registered with the Securities Commissioner prior to engaging in such activities. The Securities

Commissioner is responsible for investigation of alleged violations of securities laws, and is to initiate administrative and civil proceedings when deemed appropriate. The Securities Commissioner maintains a close working relationship and cooperates with various city, county, state, national and international law enforcement and regulatory agencies. Cases involving criminal violations are referred to the States Attorneys of various counties, the Attorney General, or the US Attorney. In these cases, the Securities Commissioner provides ongoing investigative and prosecutorial assistance. The Securities Commissioner is also responsible for promoting investor education and for fostering the formation of capital by legitimate business enterprises.

Major accomplishments in recent years include significantly increased enforcement activities. Recoveries for ND investors has increased from an average of \$200,000 per year, to more than \$500,000 per year, varying over the last three years from \$350,000 to more than \$3,500,000 annually. Since 1998, the office has improved working relationships with the Attorney General, the Insurance Commissioner, and Banking Commissioner at the state level, with local law enforcement and prosecutors at the local level, and with the SEC, FTC, FBI, USOIS, and NASD at the federal level. The office has also worked jointly with the securities regulators from Bermuda and the Bahamas regarding international fraud schemes directed at ND residents. In the past 3 years, ND has assumed a position of leadership in enforcement of interstate securities registration, regulation, and enforcement through active participation and leadership positions in NASAA (North American Securities Administrators Association) and with other state and provincial securities regulators. North Dakota maintains a system of Merit Review of securities offerings to assure that securities and franchises offered to state residents are fair and equitable to investors. This is different from a "buyer beware" review. Since 1998 the office has developed continuing education courses for financial service sales professionals.

These courses are taught several times a year at various locations across the state. In the past 4 years, the number of securities sales agents licensed to do business in ND has gone from 22,000 to more than 48,000.

In the past three years the Securities Commissioner has increased surveillance of print and electronic advertising to ND residents, including Internet surveillance. During the past fiscal year two examiner/investigator positions were added. At least four major investigations are going on at this time. In addition to enhancing the Securities Commissioner's ability to conduct "for cause" investigations and examinations, the office began a systematic program of routine examinations of sales and marketing filed offices in ND for financial sales professionals and registered investment advisors. The Securities Commissioner has established a website with links to various industry sponsored educational/informational sites offering novice and experienced investors an opportunity to learn more about our market economy. The office also offers brochures and handbooks. Capital markets are highly competitive with a limited amount of potential investors and investment dollars available. Registration and the merit reviews provide assurance to investors that they are fully informed of risk factors when making investment decisions. Registration, licensing, and monitoring of sales activity provides reasonable assurances that the financial services salespersons operating in ND are doing business honestly and fairly. The registration and enforcement activities help assure a level playing field for businesses that seek to raise capital, and for sales professionals.

The office of Securities Commissioner annually assists more than 100 ND businesses with the formation of capital through equity and debt securities offerings. The office has worked with security attorneys and small businesses to streamline the capital formation process in ND. "Test the Waters" legislation has been adopted, promoted and implemented very successfully.

We do more "test the waters" offerings in this state than the state of Pennsylvania, that is one of the most active security markets in the country. These efforts enable ND businesses to solicit the interest of potential investors before going to the expense of developing a full securities offering. The Securities Commissioner often receives letters of thanks from ND businesses for improving terms and marketability of securities offerings that have completed the "test the waters" and merit review processes. All registration forms and instructions to conduct a securities offering in ND are available on the web site.

Rep. Skarphol: These "test the waters" clientele, are these North Dakota people primarily?

Response: Primarily, these are ND persons, and in the last session we had proposed interstate test the waters legislation, but the FTC decided we couldn't do that. So the test the waters offerings are intrastate. Test the waters offerings allows a business to file a very short form with the office and go out to solicit interest in securities offerings before they actually go out and expend full amounts and can make some modifications.

Syver Vinje: (continuing from written testimony) - The Securities Commissioner provides annual continuing education to approximately 150 classroom teachers from across the state, through the INVEST NORTH DAKOTA program. This was the first program of its kind in the country, bringing practical economic education to hundreds of teachers who typically did not receive such training in college. This has become a national model for other states' continuing education programs. The web site also offers four monthly education modules that provide the opportunity to learn about personal financial topics. Each monthly module provides a lesson on a general theme that is developed month to month. The office also offers 3 professionally developed MS Power Point presentations and workbooks on personal finance and investing. These programs are available for presentation by office staff, cost free to any public

organization. On page 5 of the written testimony there is a list of the numbers of registered sales agents, broker-dealers, participants, etc. There is 1 for every 15 persons in ND.

Current issues facing regulatory agencies include a blurring of traditional boundaries between banking, insurance, and securities. This mandates that the state be prepared to make difficult decisions in organization and operation of its financial services regulatory agencies. Congressional action pre-empting certain regulatory and enforcement activities of the states in the financial sector will likely continue, and it is important that ND have a place at the table for these discussions and negotiations. More than 65% of American households are now invested in the securities markets. The federal financial services regulatory bodies focus on the integrity of the national and international markets. It is up to the states to protect the interests of the individual investors and small businesses. The states are responsible for the needs of small investors and small businesses.

Believes the executive budget proposal will allow the Securities Commissioner to meet the needs of the next biennium.

Rep. Carlisle: Have the new investigators (noted on page 2) made more money?

Response: Yes, they have increased the level of recovery significantly for ND. The current cases they are working on now are literally hundreds of thousands of dollars in commissions where there was unauthorized trading and other inappropriate activity of a couple local Bismarck brokers. Had these investigators not been available we would not have been able to pursue that case to the level that we have. There will be some restitution of some type to ND investors, and will probably bring an action against the broker/dealer for failure to supervise.

Rep. Koppelman: What is the division of labor when it comes to fraud investigation. At what point do the feds get involved and where does your responsibility end?

Response: The SEC threshold of federal involvement is about 10 million dollars. So that means that most cases in ND will not involve that amount. The SEC brings about 50 actions per year nationally against violators, the states in total bring about 500 actions. WE do about an average number in our state.

Rep. Koppelman: The explosion of the number of dealers of the licensed agents, 1 per 15 persons, and more than doubled in the last 4 years. Why is this?

Response: The number of households involved with security markets has increased quite a bit. Because of that security sales organizations have grown, and created problems in the regulatory arena, because of the old reliable stock brokers we knew and admired have been supplanted by those just looking for a quick buck and do not have high ethical standards. There is just more interest in the securities market overall.

Rep. Koppelman: Please explain the differences between the merit review and full disclosure.

Response: Merit review of full disclosure is an issue of registration of securities and what standards are applied to them. The goal is the same in the long run, to protect investors. About half of the states are merit review states and about half are full disclosure. I personally support the merit system is because when we analyze a securities we can point out deficiencies before that offering is made. It establishes perimeters and guidelines that are discretionary and they have to meet these. In a full disclosure system the party making the offering is to make full disclosure. If they don't, then the only recourse is to bring action if there is a problem. This shifts the focus from prevention to enforcement, and would take more persons.  
North Dakota is statutorily merit review.

Rep. Glassheim: Should we change the funding of the agency based more on a user fee than in a general fund operation. Should the registration fee be increased, or a small charge on brokerage activities.

Response: Each of those 48,000 licensed security salespersons pays a \$60 annual fee. We generate 11 million per biennium right now, and spend about 1 million. So we are a small but significant supplier to the general fund.

Rep. Skarphol: The governor's recommendation has cut your requested budget somewhat, do you see any major difficulty with this.

Response: We have a statutory provision that allows us to recover investigative costs, but cannot do this in every instance because there just isn't any cash, but we expect to be able to replenish the budget from that cost recovery adequately to meet the needs of the agency. Supports the recommendation.

Rep. Carlisle: What was the amount of fees generated ?

Response: \$60 per person, so that is 2.88 million per year. Just from securities sales agents. So 5.6 million per biennium comes from agent registration. Turn all of this back to the general fund, except what is spent in our budget.

Rep. Koppelman: Where do the rest of the fees come from? The rest of the 11 million.

Response: The OMB handed me a printout through December of December of this biennium, franchise registration generated \$90,950, and we have renewal of franchises coming out in March that will generate about another 90,000 in franchise fees. Registration of security offerings 3.6 million, and add to that another \$700,000, and securities dealers and investment companies registrations generate \$363,000 in fees, and security salesman 4.174 million. Most of

those fees have been paid, these are on a cash receipt basis. There must be more outstanding, a large number yet to come in. Security dealers pay \$60 per year, per person.

Rep. Byerly: Going back to the fraud investigation, and the Internet usage. Are we going to need to give you more help in dealing with interstate fraud?

Response: I am hoping that between the SEC and our national organization, we should be able to keep up with these issues, as we become more adept with our own Internet surveillance efforts, and all those organizations are certainly helping with this a great deal. We should be okay with existing sources for now. Maybe in some time in the future, there will be a need.

Rep. Carlisle: Do you coordinate with the Attorney General's office, and get complaints from citizens and they get filed in your office or with the Attorney General.

Response: We cooperate with the Banking Department with some overlap there, and cases that are referred from Insurance and we routinely refer cases to them. And also between us and the Attorney General's office. That communication has increased a great deal in the last few years.

The chairman closed the hearing on this bill.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1011

House Appropriations Committee  
Government Operations Division

Conference Committee

Hearing Date January 16, 2001

Tape Number	Side A	Side B	Meter #
1-16-01 tape 1	1321 - 2540		
Committee Clerk Signature <i>Kevin L. Bell</i>			

Minutes:

The committee was called to order, and opened the hearing for continued discussion on HB 1011, the appropriations bill for the Securities Commissioner.

The committee held general discussions between the committee members, all present, as to the budget requests and needs of the agency.

Rep. Byerly: If you remember from the testimony the fees all go to the general fund and then the agency is funded out of the general fund. So we have a significant amount of income coming out of this office. Departmental collections are estimated to be somewhat higher according to Governor Hoeven's budget. Some concerns as to how and why.

Rep. Skarphol: Questioned whether or not there were any bills to be offered that would affect this.

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Government Operations Division

Bill/Resolution Number HB 1011

Hearing Date January 16, 2001

Rep. Byerly: Most of the budget increases were due to the salary wage package. In response to questions, it was answered that last biennium the department got 2 FTE's, and the fees were changed. Any changes to the wage package will be must later in the session.

Rep. Carlisle moved a DO PASS , seconded by Rep. Glassheim.

The vote was 7 yes, 0 no.

The bill was given to Rep. Glassheim to carry to the full committee.

The chairman closed the hearing on this bill.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1011

House Appropriations Committee

Conference Committee

Hearing Date January 26, 2001

Tape Number	Side A	Side B	Meter #
1	x		939 - 1203
Committee Clerk Signature <i>L. L. S.</i>			

Minutes:

**ACTION ON HB1011.**

**Rep. Elliot Glasshelm:** This is the Securities Commission budget and the sub-committee is recommending approval of the Securities Commissioner's budget as submitted by Gov. Schafer and Gov. Hoven and the total is \$1,121,241 and this is a \$31,200 dollar or 2.9% increase over the current biennium. There are no new FTE's and they remain at 8, despite testimony that there was a 30% increase in workload over the last four years. The operating expenses are cut \$48,000 or 18% from the current biennium and the equipment line item is cut 10%. The securities office is net contributor to the general fund in registration of securities, sales people and other fees are anticipated to bring income to the general fund totaling about 10.2 million dollars during the next biennium. So there were no real increases in the budget, and were recommending it as submitted.

Page 2  
House Appropriations Committee  
Bill/Resolution Number HB1011  
Hearing Date January 26, 2001

**Rep. Mike Timm:** Rep Glassheim, we should have more departments that would bring in 10 million dollars. Any questions of Rep. Glassheim? Rep. Glassheim do you wish to make a motion that we approve the budget. So moved. Seconded by Rep. Skarphol. Any discussion?  
We have a DO PASS on HB1011.

Call the roll. Yes (20) No (0) Absent (1)

Motion passes, Rep. Glassheim will carry the bill to the House floor.

**Action completed on HB1011.**

Date: 1/16/01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1011

House Appropriations - Government Operations Division Committee

Subcommittee on Appropriations Govt Ops.  
or  
 Conference Committee

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

Action Taken DO PASS on HB 1011

Motion Made By Rep. Carlisle Seconded By Rep. Glassheim

Representatives	Yes	No	Representatives	Yes	No
Rep. Rex R. Byerly - Chairman	✓		Rep. Eliot Glassheim	✓	
Rep. Ron Carlisle - Vice Chairman	✓		Rep. Robert Huether	✓	
Rep. Kim Koppelman	✓				
Rep. Bob Skarphol	✓				
Rep. Blair Thoreson	✓				

Total (Yes) 7 No 0

Absent 0

~~House~~ Assignment Rep. Glassheim

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

Date: 1-26-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1011

House APPROPRIATIONS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken DO PASS

Motion Made By GLASSHEIM Seconded By SKARPHOL

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold	✓		Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson	✓	
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer	✓		Rep - Svedjan	✓	
Rep - Glassheim	✓		Rep - Thoreson	✓	
Rep - Gulleason	✓		Rep - Warner	✓	
Rep - Huether	✓		Rep - Wentz	✓	
Rep - Kempenich	✓				
Rep - Kerzman	✓				
Rep - Kliniske	✓				

Total (Yes) 20 No \_\_\_\_\_

Absent 1

Floor Assignment GLASSHEIM

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

2001 SENATE APPROPRIATIONS

HB 1011

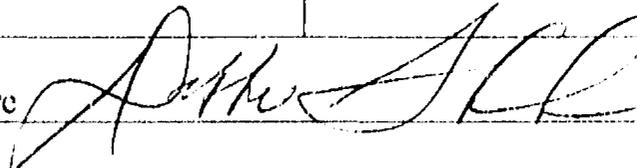
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1011

Senate Appropriations Committee

Conference Committee

Hearing Date February 20, 2001

Tape Number	Side A	Side B	Meter #
2	X		33.2-54.4
		X	0.0-2.0
Committee Clerk Signature 			

Minutes:

Senator Nething opened the hearing on HB 1011, ND Securities Commissioner

Syver Vinje, Securities Commissioner, testified (testimony attached) and thanking the legislators for the 2 FTE positions last session for investigators. Good news is that our revenue as of January 31, 2001 is \$11,690,000; estimated funding for biennium is \$10,266,000, already \$1.4 million above on revenue projections.

Senator Nething: Will the Hoeven Budget absorb \$2 million?

Jeff Larshus, OMB, revised projects absorbed \$2 million. Will check on this.

Syver Vinje: If revenue stays, we should be \$3.5 million ahead last biennium. \$1.5 million to the good and \$2 million to absorb.

Senator Grindberg: The tax credit plan, \$2.5 million revenue credit; your department involved with this?

Syver Vinje: Promote that with services in raising capital; good suggestion.

Page 2

Senate Appropriations Committee

Bill/Resolution Number HB 1011

Hearing Date February 20, 2001

Senator Grindberg: Your opinion if we use \$2.5 million revenue for the biennium.

Syver Vinje: Depends on the attorney on securities. Process not worked out and should be done with E, D & F and local level of equity. Cap needed for revenue in ND. Public and local governments to help with projects.

Senator Grindberg: Discussion with OMB on \$2.5 million; growth to offset.

Senator Andrist: Director of Banking and Finance and knowing your own department, have explored divisions merging to save money?

Syver Vinje: You may recall last legislative session the House bill regarding a merger; good idea; this is my position, not the Governor's. This has not been discussed. My observation with regulatory in different states with mergers, have better service and maintain functional regulation. The divisions have different functions as you will probably see in the future from me and the past Governor. Some mergers are successful some are not. Cross training with Governor last session showed no cost savings per say. You still need positions for both with the merger and good management.

With no opposition to the bill, the hearing was closed. Tape #2, Side B, meter 2.0.

3-28-01 Full Committee Action (Tape #1, Side A, Meter # 8.4-9.5

Senator Nething reopened the hearing on HB1011 -Office of the Securities Commissioner.

Senator Nething led the review of the bill; discussion.

Senator Solberg moved a DO PASS; seconded by Senator Holmberg. Discussion; call for the vote; Roll Call Vote 13 yes; 0 no; 1 absent and not voting.

Senator Thane accepted the floor assignment.

Date: 3-28-01

Roll Call Vote #: \_\_\_\_\_

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1011

Senate Appropriations Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken As Amended

Motion Made By Senator DeWine Seconded By Senator Harman

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman	✓				
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac					
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Senator Harman

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

**REPORT OF STANDING COMMITTEE (410)**  
March 28, 2001 11:46 a.m.

Module No: SR-54-6952  
Carrier: Thane  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1011: Appropriations Committee (Sen. Nething, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1011 was placed on the  
Fourteenth order on the calendar.

2001 TESTIMONY

HB 1011

Department 414 - Securities Commissioner  
 House Bill No. 1011

	FTE Positions	General Fund	Other Funds	Total
2001-03 Executive Budget	8.00	\$1,121,241	\$0	\$1,121,241
1999-2001 Legislative Appropriations	8.00	1,090,041	0	1,090,041
Increase (Decrease)	0.00	\$31,200	\$0	\$31,200

Major Items Affecting Securities Commissioner 2001-03 Budget

	General Fund	Other Funds	Total
1. Provides increased salaries and wages funding based on the Central Personnel Division's market study for elected and appointed officials. The proposed increase is \$159.08 per month effective January 1, 2002. The total increase required for the biennium, including benefits, is \$3,344 or \$119 more than the executive recommendation.	\$3,225		\$3,225
2. Reduces operating (\$5,000) and equipment (\$10,000) line items.	(\$15,000)		(\$15,000)

Major Legislation Affecting the Securities Commissioner

No major legislation has been introduced at this time affecting this agency.

Department 414 - Securities Commissioner  
 House Bill No. 1011

	FTE Positions	General Fund	Other Funds	Total
2001-03 Schafer Executive Budget	8.00	\$1,121,241	\$0	\$1,121,241
1999-2001 Legislative Appropriations	8.00	1,090,041	0	1,090,041
Increase (Decrease)	0.00	\$31,200	\$0	\$31,200

2001-03 Hoeven Executive Budget	8.00	\$1,121,241	\$0	\$1,121,241
Hoeven Increase (Decrease) to Schafer	0.00	\$0	\$0	\$0

**Major Schafer Recommendations Affecting Securities Commissioner 2001-03 Budget**

	General Fund	Other Funds	Total
1. Provides increased salaries and wages funding based on the Central Personnel Division's market study for elected and appointed officials. The proposed increase is \$159.08 per month effective January 1, 2002. The total increase required for the biennium, including benefits, is \$3,344 or \$119 more than the executive recommendation.	\$3,225		\$3,225
2. Reduces operating (\$5,000) and equipment (\$10,000) line items.	(\$15,000)		(\$15,000)

**Major Hoeven Recommendations Affecting Securities Commissioner 2001-03 Budget Compared to the Bill as Introduced (Schafer Budget)**

The Hoeven recommendation does not change the Schafer recommendation.

**Major Legislation Affecting the Securities Commissioner**

No major legislation has been introduced at this time affecting this agency.

Department 414 - Securities Commissioner  
 House Bill No. 1011

	FTE Positions	General Fund	Other Funds	Total
2001-03 Schafer Executive Budget	8.00	\$1,121,241	\$0	\$1,121,241
1999-2001 Legislative Appropriations	8.00	1,090,041	0	1,090,041
Increase (Decrease)	0.00	\$31,200	\$0	\$31,200

2001-03 Hoeven Executive Budget	8.00	\$1,121,241	\$0	\$1,121,241
Hoeven Increase (Decrease) to Schafer	0.00	\$0	\$0	\$0

**Major Schafer Recommendations Affecting Securities Commissioner 2001-03 Budget**

	General Fund	Other Funds	Total
1. Provides increased salaries and wages funding based on the Central Personnel Division's market study for elected and appointed officials. The proposed increase is \$159.08 per month effective January 1, 2002. The total increase required for the biennium, including benefits, is \$3,344 or \$119 more than the executive recommendation.	\$3,225		\$3,225
2. Reduces operating (\$5,000) and equipment (\$10,000) line items.	(\$15,000)		(\$15,000)

**Major Hoeven Recommendations Affecting Securities Commissioner 2001-03 Budget Compared to the Bill as Introduced (Schafer Budget)**

The Hoeven recommendation does not change the Schafer recommendation.

**Major Legislation Affecting the Securities Commissioner**

No major legislation has been introduced at this time affecting this agency.

**Summary of Legislative Changes Resulting From First House Action**

See Statement of Purpose of Amendment (attached).

**STATEMENT OF PURPOSE OF AMENDMENT:****House Bill No. 1011 - Funding Summary**

	Executive Budget	House Changes	House Version
Securities Commissioner			
Salaries and wages	\$899,728		\$899,728
Operating expenses	210,713		210,713
Equipment	10,800		10,800
Total all funds	\$1,121,241	\$0	\$1,121,241
Less estimated income	0	0	0
General fund	\$1,121,241	\$0	\$1,121,241
FTE	8.00	0.00	8.00
<i>Bill total</i>			
Total all funds	\$1,121,241	\$0	\$1,121,241
Less estimated income	0	0	0
General fund	\$1,121,241	\$0	\$1,121,241
FTE	8.00	0.00	8.00

**House Bill No. 1011 - Securities Commissioner - House Action**

The House did not change the Schafer executive budget recommendation for the Securities Commissioner. Governor Hoeven did not propose any changes to the Schafer recommendation for this agency.

1-9-01  
HB 1011

**House Bill 1011**

**House Appropriations Committee Hearing**

**January 9, 2001**

Presented by:

Syver Vinje, North Dakota Securities Commissioner

*Service  
vesting  
in  
1-20-01  
Identical*

Mr. Chairman and members of the Committee:

The Securities Commissioner administers and enforces the following chapters of the North Dakota Century Code:

- Chapter 10-04 Securities Act of 1951
- Chapter 51-19 Franchise Investment Law
- Chapter 51-23 Commodities Act
- Chapter 43-10.1 Pre-Need Funeral Services Contracts

The Office of Securities Commissioner exists to protect North Dakota investors. To accomplish this, we strive to:

- Maintain the integrity of the marketplace for securities, franchises and commodities in North Dakota
- Exact high standards of those who seek to use the money of others
- Review sales practices of securities firms and salespeople
- Promote investor confidence in our capitalistic economy
- Protect honest enterprise from dishonest competition
- Foster the formation of capital for business and economic development
- Provide public information and education about investment securities

The Securities Commissioner regulates the offer and sale of securities and franchises within North Dakota. Our jurisdiction extends beyond the state's borders and encompasses all such activity directed toward North Dakota residents, regardless of where transactions occur. Statutes require registration of all securities and franchises offered for sale in North Dakota, with limited exemptions. Statutory exemptions cover situations where, because of the nature of the security or franchise or the character of the transaction, registration is not deemed to be necessary in the public interest nor for the protection of investors.

All persons who act as brokers, dealers, and agents for the sale of securities in North Dakota must be registered with the Securities Commissioner prior to engaging in such activities, with limited statutory exceptions.

The Securities Commissioner is responsible for investigation of alleged violations of the securities laws, and initiates administrative and civil proceedings when deemed appropriate. The Securities Commissioner maintains a close working relationship and cooperates with various city, county, state, national, and international law enforcement and regulatory agencies. Cases involving criminal violations are referred to the States Attorneys of the various counties, the Attorney General, or the U.S. Attorney. In such instances, the Securities Commissioner generally provides ongoing investigative and prosecutorial assistance.

In conjunction with regulation and enforcement activities, the Securities Commissioner is responsible for promoting investor education and for fostering the formation of capital by legitimate business enterprises.

The following is a list of major accomplishments in recent years, listed by agency objective.

**Maintain the integrity of the marketplace for securities, franchises and commodities in North Dakota**

The Securities Commissioner has significantly increased enforcement activities. Recoveries for North Dakota investors have increased from an average of \$200,000 per year to more than \$500,000 per year, varying over the last three years from more than \$350,000 to more than \$3,500,000 annually.

Since 1998, the office has improved working relationships with the Attorney General, Insurance Commissioner, and Banking Commissioner at the state level, with local law enforcement agencies and prosecutors at the local level, and with the SEC, FTC, FBI, USPIS, and NASD at the federal level. The office has also worked jointly with securities regulators from Bermuda and the Bahamas regarding international fraud schemes directed at North Dakota investors.

In the past three years, North Dakota has assumed a position of leadership in enforcement of interstate securities registration, regulation, and enforcement through active participation and leadership positions in NASAA (North American Securities Administrators Association) and directly with other state and provincial securities regulators.

**Exact high standards of those who seek to use the money of others**

North Dakota maintains a system of "Merit Review" of securities offerings to assure that securities and franchises offered to state residents are fair and equitable to investors.

Since 1998, the office has developed continuing education courses for financial services sales professionals. These courses are taught several times a year at various locations across the state, and are well received and highly regarded by the industry.

In the past 4 years, the number of securities sales agents licensed to do business in North Dakota has more than doubled, from 22,000 to more than 48,000.

#### **Review sales practices of securities firms and salespeople**

In the past three years, in addition to ongoing enforcement activities resulting from investor complaints, the Securities Commissioner has increased surveillance of print and electronic advertising to North Dakota residents, including Internet surveillance.

During the past fiscal year, two examiner/investigator positions were added. The regulated community supported these enforcement staff additions. In addition to enhancing the Securities Commissioner's ability to conduct "for cause" investigations and examinations, the office began a systematic program of routine examinations of sales and marketing field offices in North Dakota for financial sales professionals and registered investment advisers.

#### **Promote investor confidence in our capitalistic economy**

The Securities Commissioner has established a Website with links to various industry sponsored educational/informational sites offering novice and experienced investors the opportunity to learn more about our market economy. The office also provides several SEC, industry and state regulator sponsored brochures and handbooks that encourage sound investment practices.

#### **Protect honest enterprise from dishonest competition**

Capital markets are highly competitive, with a limited number of potential investors and investment dollars available. Registration of securities offerings and the associated merit review provides reasonable assurance to investors that they are fully informed of risk factors when making investment decisions. Registration, licensing and monitoring of sales activity provides reasonable assurance that the financial services salespersons operating in North Dakota are doing business honestly and fairly.

These Securities Commissioner's registration and enforcement activities help assure a level playing field for businesses that seek to raise capital, and for investment sales professionals.

### **Foster the formation of capital for business and economic development**

The office of the Securities Commissioner annually assists more than 100 North Dakota businesses with formation of capital through equity and debt securities offerings. The office has worked diligently with securities attorneys and small businesses to streamline the capital formation process in North Dakota. "Test the waters" legislation has been adopted, promoted, and implemented very successfully by the North Dakota Securities Commissioner. These efforts enable North Dakota businesses to solicit the interest of potential investors before going to the expense of developing a full securities offering.

The Securities Commissioner often receives letters of thanks from North Dakota businesses for improving the terms and marketability of securities offerings that have completed the test the waters and merit review processes. Many businesses attribute the ultimate success of offerings to the efforts of the Securities Commissioner's office.

All registration forms and instructions to conduct a securities offering in North Dakota are available on the office's Website.

### **Provide public information and education about investment securities**

The North Dakota Securities Commissioner provides annual continuing education to approximately 150 classroom teachers from across the state through its INVEST NORTH DAKOTA program. INVEST NORTH DAKOTA was the first program of its kind in the country, bringing practical economic education to hundreds of teachers who typically did not receive such training in college. INVEST has become a national model for other states' continuing education programs in practical economics. The North Dakota program has continually improved, and now offers a 4-day format, granting two CE credits to participants in graduate programs at UND, NDSU, and MSU.

In addition to the Informational/educational links mentioned previously, the Securities Commissioner's Website offers four proprietary monthly education modules that provide visitors the opportunity to learn about savings, investing, and other personal finance topics on an ongoing basis. Each of the four monthly modules provides a "stand alone" lesson following a more general theme that is developed from month to month.

The office also offers 3 professionally developed, MS PowerPoint presentations and accompanying workbooks on personal finance and investing. These programs are available for presentation by office staff, cost free to any public-spirited organization.

## **Current Annual Statistics**

Securities Sales Agents Registered	48,000+
Broker-Dealers Registered	1,200+
Franchises Registered	400+
Investment Advisers and IA Representatives	100+
Investor Education Participants	5,000+
Securities Offerings Registered	2,100+
ND Businesses Assisted with Capital Formation	100+
Enforcement Investigations	100+

## **Current Issues Facing Financial Services Regulatory Agencies**

The "blurring" of traditional boundaries between the banking, insurance and securities industries mandates that the State of North Dakota be prepared to make difficult decisions in the organization and operation of its financial services regulatory agencies.

Congressional action pre-empting certain regulatory and enforcement activities of the states in the financial services sector will likely continue, and it is important that North Dakota have a place at the table as discussions and negotiations over how best to implement these changes progress.

More than 65% of American households are now invested in the securities markets.

The federal financial services regulatory bodies focus on the integrity of the overall national and international markets. It is up to the states to protect the interests of individual investors and small businesses. This is a reasonable division of authority under our federalist system of government. The states are therefore responsible to see that the needs of small investors and small businesses are not forgotten, while keeping pace with the rapid developments in national and international financial services modernization.

In conclusion, we believe that the executive budget proposal before you will allow us to meet North Dakota's needs over the next biennium.

## 2001 HOUSE STANDING COMMITTEE MINUTES

## BILL/RESOLUTION NO. HB1012 -Overview

House Appropriations Committee

 Conference Committee

Hearing Date January 03, 2001

Tape Number	Side A	Side B	Meter #
<b>Jan 3, 2001</b>			
1	x		0 - 6209
		x	0 - 6236
2	x	Blank	0 - 1460
Committee Clerk Signature			

## Minutes:

Chairman M. Timm, Vice-Chair F. Wald, Rep. Aarsvold, Rep. Boehm, Rep. Byerly, Rep. Carlisle, Rep. Delzer, Rep. Glassheim, Rep. Gulleson, Rep. Heuther, Rep. Kempenich, Rep. Kerzman, Rep. Kliniske, Rep. Koppleman, Rep. Martinson, Rep. Monson, Rep. Skarphol, Rep. Svedjan, Rep. Thoreson, Rep. Warner, Rep. Wentz.

Chairman M. Timm : Will call the House Appropriations Committee to order and open the overview hearing on HB1012 overview. Clerk will call the roll.

Carol Olson, Executive Director ND Dept. of Human Services: Over the next 1 ½ days the Dept. staff will be providing an overview of our programs and services. They will talk about the accomplishments of the past months as well as the challenges and concerns that impact the delivery of human services in our state. Our presentation will include highlights of the major factors affecting our budget request. Carol Olson then proceeded with opening remarks that

followed her written introduction testimony.

Yvonne Smith, Deputy Director of Human Services: Gave an overview of Field Services following her written testimony.

Rep. Carlisle: (2820) Are inter-governmental transfers a one time thing for the \$25 million?

Yvonne Smith: The substitution is a one time substitution, the intergovernmental transfer mechanism is one that we were able to claim money for two years, but then the federal government is closing down that mechanism so its a short time kind of thing.

Rep. Carlisle: So that \$25 million has to be one time?

Yvonne Smith: Yes, its just one time.

Rep. Martinson: Can that \$25 million be taken out of this budget?

Yvonne Smith: Intergovernmental transfer funds once they are paid to the state lose their federal identity and can be used elsewhere.

Yvonne Smith: Continued with presenting her written testimony.

Rep. Svedjan: Yvonne, you spoke of intergovernmental transfer money losing its federal identity and then it can be used for other purposes. That's one issue, also the length of time that this program will be available to us is another issue, but I think of what's at real issue is whether or not we can legally use those funds as sup plantation for state general fund dollars for Medicaid purposes, how comfortable are you that we can do that?

Yvonne Smith: I think I will ask Dave, Dave is not here, but will be present tomorrow. They do lose their identify but once they are paid to the state they no longer are federal funds but one of the issues the federal government is wrestling with and one of the reasons for closing down the ability that states have that to generate this money through intergovernmental transfers was a concern that it was interest supplanting. There have been some states in the nation that basically

have used intergovernmental transfers in place of general funds to fund their entire Medicaid program and it was becoming a real drain on the federal treasury and thus the recognition that they needed to close down this ability. We are on a phase down schedule as I understand it over 5 years and our ability to claim this money goes down by 25% each year. Its hard to project exactly what that means because the intergovernmental transfer is claimed based on the difference between the Medicare rate and the rate that we pay nursing homes in North Dakota, and as that gap closes their less money to claim. But its legal, but is not looked upon well. But it is legal to do, and has been done in many states, in terms of this supplanting issue.

Evan Smith : Continued with presenting written testimony.

Mike Schwindt, Child Support Enforcement Director, Dept. of Human Services Testimony.

Rep Timm: (633) Tape 1 -side B When the court issues an order to an employer to withhold child support out his check, who's responsible for going after the employee or employer if no funds are forthcoming? You or the Court?

Mike Schwindt: Actually both of us get involved in the process. The withholding order is issued by the clerk of court or by the regional unit and then if nothing comes in then we ask the court to go back and have an order to show cause for the employer as to why their not sending the money in, but the initial steps are with us and we try to get them to send the money in., sometimes they fail to recognize the responsibility and try to do it on their own time frames.

Rep Timm: That takes time on your part to go to the court.

Mike Schwindt: yes.

Rep Aarsyold: What is a Non-4D case? What exceptions are there?

Mike Schwindt: The Non-4D represents folks who have a court order out there that says child support is due but has not applied for services under the 4-D program or come to us for public assistance programs such as AFDC for foster care, or they may have been to us and said they don't want anything more to do with you, we just want our money. This is either what the clerks of court used to handle which is totally outside of the work of our department or our program.

Rep Svedjan: What do you know of the make up of the non custodial parent/parents who are \$150 million dollars in arrears. Are these people who can't be located, are they people who are dead broke, incarcerated, what do you know about them?

Mike Schwindt: I am embarrassed to say that I don't know a whole lot. This is one of the things we have to get a better grip on. I look at the non-custodial parents, the two different groups. There are the folks who pay on-time all of it or more than is due, in any given month we will have \$500,00 - 600,000 on hand at the start of the month to make payments. There is another group of people out there who want to pay and can't because they don't have a job or something happened such as health problems. The third group, that really bothers me is the group that has the ability to pay and will do anything in their power to not pay. We need to do a better job of getting the data out with our computer system to get more data with characteristics. Right now computer programming time is at a premium we simply don't have the time to go in there.

Rep Svedjan: If you are able to categorize these three types of people that tells me that you know something about them.

Mike Schwindt: Yes, I do know a little about them simply because of the types of phone calls and letters I get from people that are not being paid and through customer service contacts.

Rep. Monson: In your testimony you spoke of 50,000 cases. Is this 50,000 dead beat dads, families, or kids or is this a duplicate count where you have many several times a year that you have to reopen this case? This seems like a huge number to me.

Mike Schwindt: 50,000 cases are 50,000 court orders that the court has issued on these cases, or has applied for our service. Any individual can any number of court orders on them, its not a one to one relationship.

Rep. Gulleason: Can changes to the amount of payments from a non-custodial parent be made without their knowledge?

Mike Schwindt: I'm going to have to plead to a certain amount of ignorance on this question because I have not had the opportunity to learn all the details on this. But technically I think the answer is yes, but it shouldn't happen, because you can do service and somebody may not get it for whatever reason and the service still works, and the case is under review the judge can issue, although I understand that this doesn't happen often, but it can happen. I think I've seen two cases where this is has happened.

Rep. Gulleason: My other question is, do you know how often is the actual amount of support revisited? Is it just at the request of one or more of the parents, or is there a normal time table?

Mike Schwindt: The normal time table for the 4D program is no more than 35 months, although it can happen if there is a new order earlier you can always take your case back to court using your own attorney or doing it yourself and having it revisited. The general rule is under the 4D program is no more than 35 months. I know there are cases out there that have not been revisited in 10 years.

Rep Skarphol: (1985) Tape 1 - side B. Are there any statutory or regulatory provisions that require a fiduciary responsibility on the part of the custodial parent to use that money wisely?

Mike Schwindt: As far as I know the answer is no, but don't look to me to be a final authority on that. There is however an expectation that the moneys would be used wisely.

Rep Skarphol: But are there statutory or regulatory provisions in place that require fiscal responsibility then, that the money be used wisely? Are there no regulations as to how the money is used?

Mike Schwindt: There are no regulations or statues that say the parent or custodial parent must be fiscally responsible.

Rep Heuther: Not a question but a comment: Probably what I saw was happening in the neighborhood of the community that's when they needed to step in to help those children and help set this straight. I understand its not your responsibility, and it probably does take a number of people to help raise these children outside of their regular family.

Mike Schwindt: We really have to look to the courts as they have better resources, and they tell us how to handle situations.

Mike Schwindt: Continued with prepared testimony.

Rep Delzer: During your presentation and even the ones before, there is quite a few references made to the budget request, now this information were getting from you is that the request as it went to the Governor or is that as it came back from the Governor and is in the budget?

Mike Schwindt: What I'm presenting here, is what is shown in the budget for the Governor's recommendation and I'm assuming it would be the same for the rest of it as well. Yes it is.

Rep Delzer: Their all budget recommendations, their not requests right?

Mike Schwindt: Yes. (End of testimony by Mike Schwindt)

Blaine L. Nordwall, Director, Economic Assistance Policy, Begin Overview Testimony.

Rep. Delzer: (Tape 1 - Side B ) 5386 Tanf is not an entitlement though, that is something we could address if we decided we had to, is it not?

Blaine Nordwall: The legislature has already addressed that, and the statutes specifically says that it is not an entitlement, the difficulty is that the federal government has indicated to us that they would regard a failure to distinguish recipients or applicants on the basis of race or position as a member of a tribe as invoking civil rights violations. This is something were not in accord with the federal government, but that the position that the current administration has taken and we hope we can make some headway on that subject in the future either with the administration that is upcoming or possibly in the reauthorization in 2002.

Rep. Syedjan: Are you saying that the state would be obligated to provide payments to people eligible for a tribal Tanf program even if they are participating in a tribal Tanf program?

Blaine Nordwall: That is the position the federal government has taken. The consequences of that position is that the Three Affiliated Tribes plan as we understand it, is they do not propose to make any grants or any assistance grants or cash assistance available to their members as they expect those members to get cash assistance through the state program.

Rep. Kliniske: If Three Affiliated Tribes is planning on setting up a Tanf program, what's the purpose of having a Tanf program if there not going to give benefits?

Blaine Nordwall: The Three Affiliated Tribes program appears to be interested in doing is occurring educational opportunities for their membership and so they would put the money into supporting people who are accessing educational opportunities primarily. They would not necessarily spend it on a grant, and the consequence they hope is to achieve educational preferences in the state program where we expect people to go to work right away.

Rep. Skarphol: If the tribe decides to set up a Tanf program are they able to discriminate against nonnative Americans who wish to participate in their program?

Blaine Nordwall: I believe the answer is yes, though there is a long tradition of tribal based programs being permitted to limit their services to tribal members. I have not heard an discussion specific to the Tanf program.

Blaine Nordwall: (Tape 2 - Side A) (0) Continued with prepared testimony.

Rep. Timm: Going back to the food stamp program, can somebody who leaves the State of North Dakota and goes to Florida, that they can go into a grocery store and get food through their card and who is it charged to? The State of North Dakota or Florida?

Blaine Nordwall: The way it would work is at the point a benefit is distributed to the card electronically. We assume that somebody is eligible for food stamps at the beginning of the month we issue some additional benefits to them. They leave North Dakota and they are still entitled to use the food stamp card because this is an entitlement and they end up in Florida. Under the federal law they have to be able to use their card in Florida. They may reapply for food stamps in Florida and may be eligible there. They would get a new card in Florida.

Rep. Byerly: Has the department succeeded in doing away with all fraud enforcement in economic assistance?

Blaine Nordwall: We haven't done away with enforcement in the sense that it doesn't happen any more, there continues to be fraud enforcement, however, there are no fraud programs that are identified as receiving funding through here. That has to be relegated to the counties.

Blaine Nordwall: **End of testimony presentations and no further questions.**

Chairman M. Timm: House Appropriations Committee stands adjourned until 8:30 a.m. January 4, 2001.