

2011 SENATE APPROPRIATIONS

SB 2011

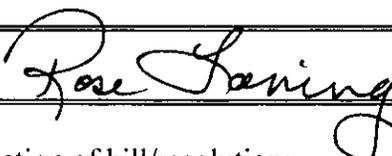
# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2011  
January 6, 2011  
12611

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the securities commissioner.

**Minutes:**

You may make reference to "attached testimony."

**Chairman Holmberg** called the committee to order on SB 2011. Roll call was taken. All committee members were present. Tad H. Torgerson and Sheila Peterson representing OMB. Sheila M. Sandness representing Legislative Council.

**Karen Tyler, ND State Securities Commissioner:** Testimony attached - # 1  
She presented an overview of the agency and said the agency generated over \$17 million in revenue last biennium. She also presented key statistics from various areas of functionality within the agency. Testimony attached - #2.

They were not requesting an increase in their general fund operating appropriation which is held at \$706,441. The salary and wage appropriation request has been increased by \$120,858, which reflects the adjustment applied by the office of Management and Budget for salary and benefit cost increases included in the executive budget. The Department is not requesting any additional FTEs and their total general fund budget request is \$1,909,220.

According to the bill, the increase is \$120,858, but according to your green sheet, the increase is \$110,858. The \$10,000 difference is due to the manner of accounting for the \$10,000 that was our share of the equity pool last biennium. That how it's been explained to me.

The agency also has a special fund appropriation request is reflected on line 14 of page 1 of SB 2011. This is also not increasing and is being held at the level \$317,199. It is restricted to funding the financial education and literacy related expenses of the department.

She also explained several future critical issues (reading from testimony)

- Fraud Against Seniors
- Need for Improved Personal Financial Capability
- Evolution of Securities Products, Services and Delivery Mechanisms
- Implementation of Dodd-Frank Regulatory Reform Legislation

She gave projections for the upcoming biennium which they are holding at \$17 million. But said a number of analysts are predicting the financial services industry will enter into another period of contraction in 2011.

She concluded her written remarks.

**Chairman Holmberg** asked about the fraud against seniors and wondered if it was relatives to seniors that were committing the fraud.

**Karen Tyler** replied that it is a significant aspect of fraud against seniors, but they continue to see investment professionals taking advantage of seniors, as well as con artists taking advantage of seniors. Impaired cognitive issues are part of the equation. Regulators are working with the health professionals to identify cognitive impairment because that is a significant component of the ability to commit fraud against this demographic. If a relative understands that there is cognitive impairment, it makes it easier to engage in fraud and abuse. We're seeing the industry folks and con artists as well.

**Senator Robinson** asked for clarification on the differential on \$120,000 on the benefit side versus the green sheet figure of \$110,000 and wondered if anything needed to be done or is it ok.

**Tad H. Torgerson, Office of Management and Budget** - The difference is when we write the appropriation bill, they go back to the original appropriation that was passed out of the Legislative Assembly. The green sheet has the equity adjustments that were given out in the current biennium.

**Senator Robinson:** The green sheet is actually \$10,000 less than what we have in the written presentation. If we pass this bill out of here, will there be sufficient dollars to address the issue or will we be off \$10,000?

**Sheila M. Sandness, Legislative Council** - We track the changes from 2009 –2011-13 and because the \$10,000 was included in the appropriation for 09-11, for the purposes of the green sheet in showing the major changes from last biennium to this biennium, we include the \$10,000 in their 09-11 appropriations on the green sheet. The bill is correct because it starts with 09-11 before the \$10,000 was added. The green sheet includes it so you can see the actual change.

**Senator Robinson:** Will we see this in other budgets?

**Sheila M. Sandness:** Anything in the green sheet will be footnoted.

**Senator Warner:** Are there financial advisors who do not sell securities? People who just give advice?

**Karen Tyler:** That would be an investment advisor. They actually do not engage in trading securities. They just give investment advice and charge a fee for it and yes, we do regulate those individuals. They work for investment adviser firms, so we regulate the firm, and they, as individual professionals are called investment advisor representatives. The important distinction between an investment advisor rep and a securities agent – also known as a stock broker – is their method of compensation and their duty to the client. Method of compensation for a stock broker is a commission per trade. Method of compensation for an investment advisor is a fee. It might be an hourly fee; might be a fee based on assets under management. Then there's the duty. Stockbrokers are held to a suitability standard. They just have to make sure the investment is suitable for you. An investment advisor is held to a fiduciary obligation and is legally bound to put the interests of the client first.

**Senator Warner:** What access do you have to the Attorney General's office?

**Karen Tyler:** We have an attorney on staff, Mike Daley, who handles all the legal issues for the department. We have on occasion worked with the AG's office, but generally, we handle all the issues ourselves.

**Senator Warner:** With the consumer fraud division, are there mutual interests between your activities and the consumer fraud's division in the AG's office?

**Karen Tyler:** On occasion we have something that doesn't fit with our agency or they may get something as well. We'll visit and see where the appropriate place is for the issue.

**Senator Bowman:** With the tremendous amount of new wealth in our state, and the vulnerability of some of our elderly farmers & ranchers that are receiving this, not knowing how to invest, do you think there will be more people come in that will try to take advantage of them? Is there a way to put on seminars, or some sort of education telling them to be careful because this is what could happen. In the long term, this could save some problems down the road.

**Karen Tyler:** Absolutely. We have had one complaint related to the tremendous amount of wealth being created in the western part of the state. I'm surprised there's not more. Whether it's issues relating to a legitimate industry professional who is recommending the wrong thing or taking advantage of individuals who are in a situation of newly created wealth and haven't had these decisions to make before. Or whether it's a financial predator who understands that there's a tremendous amount of wealth being built out there and is coming in for the kill. Con artists go where the money is. We are looking at putting together some public service announcements for starters to be run in the western part of the state. We want to raise awareness that before you make any decisions, ask questions and some basic ones would be "Is the individual soliciting you registered to do business in the state?" "Is the opportunity they are offering you registered in the state?" We are going to go with paid public service announcements this spring.

**Senator Wardner:** I didn't realize you generated revenue - \$17million. Where does it go?

**Karen Tyler:** It goes to general fund. Certain categories of monies that we collect can be placed in our special fund for education purposes, but the vast majority goes to the general fund.

**Senator Wardner:** Under what line does it go under?

**Tad H. Torgerson, OMB:** It actually goes into the general fund. On page 17 of the executive budget book, there's a line almost to the bottom of the revenue sources that's called departmental collections. It's included in that.

**Senator Wardner:** With increase that you have to cover - from \$25M to \$100 M, what kind of pressure do you see on your agency as far as load?

**Karen Tyler:** I don't think it will be a significant additional burden. We'll probably see a handful of advisors that will come under our jurisdiction. We are facing some constraints today, but we didn't want to rush into asking for another FTE in the area of our examinations until we really had a feel for what this was going to mean for us.

**Senator O'Connell:** Part of my question got answered, but you can assess civil penalties? Is it monetary?

**Karen Tyler:** We like to assess per violation. Then we would have some discretion in assessing the full amount. It depends on the level of cooperation by the respondent and the facts and circumstances of the case, but generally speaking, the penalties do go to the general fund. We can assess civil penalties up to \$10,000 with discretion, but they go to general fund.

**Senator Christmann:** On the back page, with the 65,000 dealer agents - is that a misprint? Who are these people? That's over 10% of the adult population. Do they pay a registration fee?

**Karen Tyler:** These are the stock brokers and investment advisor reps. What happens is that the firms (ex. Morgan Stanley, Merrill Lynch, etc.) will choose to register their folks in every state in the country rather than run the risk of somebody in New Jersey calling into ND to do business and not be registered to do business. That's why number is so big. We don't have that many individuals residing here, but we have about 1500 domiciled here. They choose to register to avoid any liabilities. They pay a registration fee of \$60 per person and \$50 for investment advisor reps. That's bulk of our revenue. That accounts for just over half of the revenue we generate on a biennium basis.

**Senator Wanzek:** The \$317,000 special fund appropriation, does that come directly out of your revenues?

**Karen Tyler:** The special fund balance at this time is about \$900,000 dollars. The balance comes from significant settlements that we've had with the industry. When certain conditions exist, we are able to move some of that money into the special fund. It's not a sure thing. The appropriation that we request covers the education that this department administers on a routine basis. We also work with school systems across the state.

**Chairman Holmberg** closed the hearing on SB 2011.

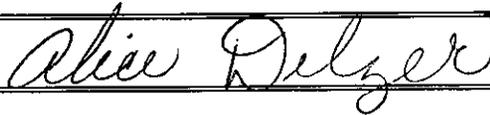
# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee  
Harvest Room, State Capitol

SB 2011  
02-10-2011  
Job # 14298 and 14299

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Budget for Securities Commission.

## Minutes:

You may make reference to "attached testimony."

**Chairman Holmberg** stated we will look at SB 2011 the budget for the Securities Commission.

**Senator Bowman** moved **Do Pass**. **Seconded by Senator Robinson**.

**Chairman Holmberg** Would you call the roll on a **DO PASS** on SB 2011?

A Roll Call vote was taken. Yea: 13; Nay: 0; Absent: 0. **Senator Bowman** will carry the Bill.  
(Meter 1.16)

The hearing was closed on SB 2011. (Meter 1.16)

There was further discussion about Bills that the committee may be acting on today.

Date: 2-10-11  
Roll Call Vote # \_\_\_\_\_

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2011

Senate Appropriations Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Bowman Seconded By Robinson

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Sen. Bowman

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

**REPORT OF STANDING COMMITTEE**

**SB 2011: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **DO PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2011 was placed on the  
Eleventh order on the calendar.

**2011 HOUSE APPROPRIATIONS**

SB 2011

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division  
Medora Room, State Capitol

SB2011  
March 3, 2011  
Recorder Job# 14921

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the securities commissioner.

## Minutes:

**Chairman Thoreson:** Opened the hearing on SB2011.

**Karen Tyler, Commissioner, North Dakota Securities Department:** See attached testimony 2011.3.3.11A.

**Representative Klein:** You derived these funds from fines or forfeitures or something of that nature?

**Karen Tyler:** Are you speaking specifically of the special fund?

**Representative Klein:** Yes.

**Karen Tyler:** That generally is from fines that are assessed against the industry members that we regulate in our enforcement cases. We do have an education program that run every summer and some of those registration fees go in there. It's \$50.00 per teacher; but most of it is from fines and forfeitures.

**Representative Klein:** These fines are for various companies that violate the rules and there's a guideline you have as to how much you can fine for various infractions?

**Karen Tyler:** That's correct. Under certain circumstances the percentage of the fines that we assess against firms in our enforcement cases can go into this fund and the authority to do that is under 10-04-03 of our act. It just depends on the circumstances of the case.

**Representative Dahl:** Is there any federal oversight facing companies? Do you work in tandem with the federal government or do you also apply federal law to some of these companies?

**Karen Tyler:** The regulatory structure over the securities industry is like a 3 legged stool. We have state securities regulators, the securities and exchange commission and an entity

called FINRA; which used to be the NASD. We do work in collaboration and cooperation. We have jurisdiction in common areas; but, then the FCC also has unique jurisdiction over trading markets, for example, trading exchanges. In some areas, it's shared jurisdiction and some areas it's unique.

**Representative Klein:** Elaborate on the third leg.

**Karen Tyler:** It's FINRA that stands for Financial Industry Regulatory Authority. It used to be known as the NASD, the National Association of Securities Dealers. NASD merged with the regulatory arm of the New York Stock Exchange to become this new entity called FINRA. They've been around since the 1940's; but, through this merger, they came together and came up with a new name.

**Representative Dahl:** In addition to regulating the professionals who works at these firms, do you also have any oversight with regard to our publicly traded companies in North Dakota? What is that authority?

**Karen Tyler:** We do to an extent. For example, let's take MDU, if an investor was sold shares of MDU and let's say it was an inappropriate sale based on the person's circumstances. We would have the authority to investigate that complaint. In that regard we have jurisdiction over the sale of publicly traded companies; but, a company like MDU or any publicly traded company, doesn't have to register their securities on the state level. They do that with the securities and exchange commission.

**Chairman Thoreson:** Is that something that's North Dakota specific? What about in other states, do they have to register with states in some cases; or, is it almost always the case where it's just on the national level?

**Karen Tyler:** We have a series of exemptions under certain circumstances. Publicly traded companies are generally exempt from state registration across the country. They just have to register with the securities and exchange commission. For example, a local company that wanted to sell securities to raise capital, they would have to register with us. But if it's a national publicly traded company, they are exempt from registering their securities at the state level.

**Representative Kempenich:** Are they qualified investors or how do you classify different levels of how individuals invest?

**Karen Tyler:** What Representative Kempenich is referring to is called an accredited investor. It is a concept that is used in regulation to determine who needs protection. If you're defined as an accredited investor, that means you have a net income of at least \$200,000.00 a year or a net worth of \$1 million or \$1.5 million. They're looking at raising those thresholds because they haven't been changed in a long time. What that means is, certain types of securities offerings you can't be solicited for; those are usually private deals. In a private placement deal the promoter of the securities sale can't reach out to and solicit from investors who do not meet that accredited investor threshold.

**Representative Kempenich:** The oil activity has created some wealthy people. We heard of a company in Texas that's being indicted in Texas for defrauding 300 people of \$22 million for selling dry holes. We found out in this state there is nobody watching that. The Secretary of State registers them as a company, but there's no due diligence there. The Oil and Gas Division just issues the permits. Do you get involved with that?

**Karen Tyler:** We do, from the standpoint of the solicitation for the investment; Oil and Gas is a big problem. We put out a list of the top 10 every year across the country and Oil and Gas usually makes it on the list. The role we have to play strictly has to do with the investing. We don't get involved in whether or not there is actually oil there; it's the solicitation of money from our constituents. If a company is soliciting North Dakota residents to invest in their operation, the securities must be registered here unless they qualify for some sort of exemption. The people soliciting must be registered here.

**Representative Brandenburg:** Is there something that we need to do so we don't have companies that do business like this?

**Karen Tyler:** We've had this conversation before on how this entity raised its capital. Unfortunately in this area the state is preempted; it's called Regulation D Rule 506. This also goes to the accredited investor issue as well. It's a federal exemption from registration of securities; it was designed to help small businesses raise capital. When they do this fund raising we are preempted. The only thing we can do is come in after the fact and bring a fraud case if it appears there's fraud.

**Representative Brandenburg:** There's still people down there but they're to the point that they don't think they can get anything back anyway.

**Karen Tyler:** It's challenging with these issues in a small community or where the word travels from neighbor to neighbor; it sounds like a good deal and people want in. If they qualify as an accredited investor, which many of our farmers and land owners do, they qualify; and when they sign the document that says that they are an accredited investor to the investment, they're signing away our ability to help them unless there's fraud.

**Representative Kempenich:** With the Secretary of State, does your office follow their website with companies that are newly registered?

**Karen Tyler:** We do utilize the Secretary of State's website on a number of occasions. The problem is we don't know what kind of solicitation activity is happening out there until we hear from the public.

**Representative Brandenburg:** It seems what they do is have their public meeting and they get a list of names; and then they go door to door.

**Karen Tyler:** One thing we use is the media. If we see something in the media that looks like a meeting is held, we'll contact the company and ask what they're doing.

Testimony continued.

**Representative Dahl:** Does the executive budget recommendation take account that increased capacity that you'll have to oversee additional assets in these companies?

**Karen Tyler:** We didn't seek additional funding. We don't know at this point what that will mean for us. It might mean just a handful of additional investment advisors. We didn't feel we needed go out and seek additional funding until we have a better feel for what it's going to mean for us. At this time, we feel we can manage it.

**Representative Klein:** When does this new rule take place from the \$25 million to the \$100 million? Is that in place already?

**Karen Tyler:** That will take effect on July 23, 2011.

Testimony continued.

**Representative Kempenich:** Did you bring this up when it was being heard on our side?

**Karen Tyler:** Aggressively. But the legislation went through.

**Representative Kroeber:** Where did it come from? Who sponsored the bill?

**Karen Tyler:** Representative Klemin was the primary drafter on the bill.

**Representative Dahl:** I pulled up the bill within our law system and there doesn't look like there's a fiscal note from this version that I see on line.

**Karen Tyler:** There should be.

**Representative Dahl:** I'm looking at the 3000 version and I don't see a fiscal note with it.

**Karen Tyler:** I thought when it went to the floor, the fiscal note was on it.

**Chairman Thoreson:** We'll check into it and get copies of the bill and see if there is a fiscal note.

**Brady Larson, North Dakota Legislative Council:** I will check to see if a fiscal note was requested.

Testimony continued.

**Representative Kempenich:** Who put the amendment in?

**Karen Tyler:** I believe that the amendment was drafted at the request of Representative Kaiser.

**Representative Kempenich:** It's referring to administrative rule, do you issue administrative rules?

**Karen Tyler:** We have very broad statutory authority under 10-04-08.1 to place conditions, limitations, restrictions on securities offerings. The conditions, limitations and restrictions do not have to be set forth in the form of a rule or statute. We just have that statutory authority to do it. It allows us to have the flexibility on the local level. We have not had to convert these policies and guidelines into rules because we have statutory authority. The committee asked the Attorney General's office if we have actually have this authority and the Attorney General came into the committee and said this authority was established for the commissioner in 1959; and it's been in place ever since. That's when they brought the amendment to get rid of it.

**Representative Kempenich:** How would that affect that investment group out of Minot; they're real estate aren't they?

**Karen Tyler:** In Reat out of Minot and Dakota Reat out of Fargo were supporting this legislation at the outset. In looking at this further and understanding the broad ramifications of what they have supported, they've retracted their support now of the legislation.

Testimony continued.

**Representative Klein:** You said half of that \$17 million comes from registration? What about the other half; how's that raised?

**Karen Tyler:** Securities registrations. We get a lot of revenue from the registration of securities; fines and forfeitures in our enforcement cases.

**Representative Kempenich:** Are there many PONSI schemes showing up in this state?

**Karen Tyler:** There's always a PONSI scheme on the books. It's a very common type of fraud; it can be fronted with many different things.

**Chairman Thoreson:** Let's talk about gold. That's become a hot item right now and I'm curious as to what activity we're seeing and who is involved in that industry in the state.

**Karen Tyler:** We really haven't seen any activity in that area. We saw the operation in Fargo, there was some news on that. We haven't had any complaints in the area of gold. What often happens, whether it's gold or oil and gas, whatever is hot, a con artist is probably going to take that idea and turn it into a fraud. So far, we've not had any complaints related to any kind of gold solicitation activity.

**Representative Brandenburg:** I noticed that there are 6 individuals that have been prosecuted. What kind of prosecution do you usually have for these crimes?

**Karen Tyler:** We don't have criminal authority in the department. So what we do is work with the state's attorney in the appropriate community and refer the case to that state's attorney; then we work with them to help them build their case and pursue the prosecution.

**Representative Brandenburg:** What I'm wondering is if they end up with 6 months, 1 year, 5 years; what do they get for a sentence?

**Karen Tyler:** Twelve years in federal court was the longest. More recently we've had 2 years for a guy in Fargo, 8 years for Atkins, Mr. Hager in Fargo received 6 months and then violated that probation period; I think the second time around was 30 months. We're seeing more successes.

**Representative Klein:** I'm looking at enforcement cases that you opened. Typically, how long does it take on the average to get everything done and close the case?

**Karen Tyler:** That is all over the board; it depends on the size of the case, how much money is involved, how many victims are involved, how many brokers are involved, the nature of the case, the extent of the records that have to be analyzed, bank records that have to be tracked. It also depends on whether or not we have a brokerage firm behind the case who's highly motivated to get the case settled.

**Representative Klein:** So you'd say some of them drag on 3 to 5 years?

**Karen Tyler:** That's not unusual. That's possible because they are document intensive and if we don't have a brokerage firm on the hook, they will take longer.

**Representative Glassheim:** What has been the impact of the federal legislation? Are we better protected, not better protected?

**Karen Tyler:** I think the jury is very much out on that. What the that legislation did, specifically in the area of securities regulation, it created a very large burden for the securities and exchange commission to write rules. Because they're still in the process of doing that, it's difficult to assess whether or not it's been effective.

**Representative Glassheim:** Do you need any additional regulatory powers?

**Karen Tyler:** I would not say that we need additional authority; but, we really don't want to lose the authority that we have and HB1140 does that. If HB1140 passes, we will be the only state in the country that doesn't enforce suitability standards in the offer and sale of real estate investment trusts. This legislation just doesn't affect North Dakota brokers, it affects 65,000 stock brokers that can sell into the state and any real estate investment trust that can be sold here; we have almost 200 that can be sold in the state.

**Representative Klein:** Is there language that we could put into this bill that would undo the problems with HB1140?

**Karen Tyler:** Yes, we have it ready for you.

**Representative Kempenich:** I see you have a little money in there for equity on that and then just a spend down of your operating expenses?

**Karen Tyler:** Are you referring to the equity piece that approved last?

**Representative Kempenich:** Yes. What's that targeting?

**Chairman Thoreson:** That's something that we would like.

**Karen Tyler:** I think I need to get a little more educated with that issue. With the equity piece that we received last time, that was allocated. I didn't have the understanding that we would have opportunity to do that again.

**Representative Kroeber:** I see on significant audit findings on the bottom of the green sheet, it says that the securities department doesn't have proper control surrounding the collection of revenue on your audit report. Do you need any corrections that? What's the status of that?

**Karen Tyler:** We actually had that fixed before the auditors left the office when they did that audit. Our administrative assistant had control of receipting monies in and she also had control of sending some letters out that said you've been registered. That was the control issue; so, we eliminated her ability to have access to those letters.

**Representative Dahl:** You talked about the need for improved personal financial capability. The Treasurer's office has launched a financial literacy program as well; any collaboration there?

**Karen Tyler:** We keep in touch with who's doing what so we don't have overlap. The Treasurer's office has done a lot with the bond market association and focuses on some other programs.

**Chairman Thoreson:** In your testimony you talked about implementation of Dodd-Frank and state legislation; is there anything else federally that's going on right now that might impact your area?

**Karen Tyler:** One really big issue about the Dodd-Frank debate was fiduciary duty. I mentioned a distinction between stock brokers and investment advisors. Stock brokers have to comply with suitability standards and that's their principle of regulation. Investment advisors are bound by a fiduciary duty. A fiduciary duty requires the investment advisor to put the interests of the investor ahead of their own; they can have no conflicts. Stockbrokers aren't held to that standard; so the Dodd-Frank legislation was an opportunity to take the fiduciary duty standard and apply it to stockbrokers as well.

**Chairman Thoreson:** What effect would it have on the consumer in the state of North Dakota?

**Karen Tyler:** The industry is making noise about it raising costs for investors. It would be a positive thing for investors. From the stand point of enforcement, it will affect the way we can bring cases; because, you can go to a breach of fiduciary duty in the event of misconduct on the part of a broker.

**Chairman Thoreson:** Closed the hearing.

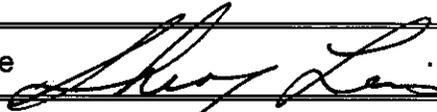
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division  
Medora Room, State Capitol

SB2011  
March 21, 2011  
Record Job# 15741

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the securities commissioner.

## Minutes:

**Representative Kempenich:** Opened the discussion on SB2011.

**Representative Kempenich:** How has your budget been as far as what you have left? Have you run short in any areas?

**Karen Tyler, Commissioner, North Dakota Securities Department:** No we don't anticipate having any issues.

**Representative Kempenich:** That bill in question did get defeated in the senate?

**Karen Tyler:** We're a little concerned about that. That was HB1140; it was defeated out of the senate. It came out of the committee "do not pass 7-0". On the floor it was 0-46 1 absent. Our concern is that there will be an attempt to resurrect it as an amendment to something else perhaps.

**Representative Kempenich:** We're trying to figure out some wording. Is there any way of fixing that in general?

**Representative Thoreson:** I know there are some people in the house that feel strongly on that there needs to be some language in the administrative rule making. The question was mostly on the fiscal note on HB1140; it was roughly \$500,000.00 total. There was a question about why it would be so much if you're just taking existing rules and changing them for North Dakota. You're rules are coming from another organization, is that correct?

**Karen Tyler:** The guidelines and policies that we use are nationally drafted through NASA; which is comparable to the NEIC. There is a pretty comprehensive body of standards and policies out there; 30 to 35 of them. It would be a pretty laborious undertaking if we have to go through each one of those and convert them into a rule form.

**Representative Thoreson:** You said that you would have to hire outside counsel to do that?

**Karen Tyler:** That's correct.

**Representative Kempenich:** I think one of the problems is where would an outside individual find your policies? If they aren't either in statute or in a rule, as a policy they stay pretty much in your office. They're not published any place are they?

**Karen Tyler:** What's gotten pretty muddled up in this legislation is that this is about capital formation. The issue of where they're going to find it isn't really a concern. These are uniformly applied policies across the country; policies that have been put out for comment. Everything is drafted nationally, put out for public comment and then adopted by the regulators. So it's not like it's a secret and it's the same approach being used in every state.

**Representative Kempenich:** You explained that it was basically coming from one entity in Bismarck?

**Karen Tyler:** So the discussion has been that you may amend our budget to bring this language back?

**Representative Thoreson:** There has been some inquiry about that as to whether or not there should be something. I don't know if it would be specifically language from HB1140 or something. The question being about being exempt from the administrative rule making process and that's where I think we need to have clarification. There's people that believe that that's the case; and so, they're wanting something somewhere to tighten that up.

**Karen Tyler:** The idea that we're exempt from the administrative rules practice is that we are not. What we have is broad statutory authority under 10-04-08.1 to apply rules, orders, directives, we can place conditions and limitations on securities offerings. It was intentionally crafted that way so that we have the statutory authority to apply some discretion when we're dealing with capital formation. We can place these conditions on securities offerings because we have statutory authority. These policies and rules help frame the regulation of capital formation. Because they're guidelines and they're not set in stone as rules, we can be somewhat flexible within the framework when it's appropriate. We've had this regulatory system in place since 1959. The regulator has had this discretion to work with companies within a uniform framework. We have language that we could propose to you that would put this issue to rest once and for all.

**Representative Thoreson:** Do you have something prepared on this?

**Representative Kempenich:** I think we should one way or the other address this. What was section one doing in HB1140? What were you proposing that we do adopt 1959 rules?

**Karen Tyler:** In many places as you are aware in the insurance act you will find reference NEIC drafted rules. What we were going to propose was we make reference to the NASA standards. It's done a number places within the insurance act and resolve the whole problem.

**Representative Thoreson:** It would make this issue go away.

**Karen Tyler:** It wouldn't satisfy the issue of the stockbroker and probably not the individual who drafted the legislation. It would resolve the matter with finality.

**Representative Kempenich:** When we talked the first time I got the feeling that you could expose people that couldn't afford to get into these things.

**Karen Tyler:** The language that we were going to propose when it was in the house but were not allowed to do so made reference to the NASA standards. (recording glitch)

**Representative Thoreson:** It basically freezes where we are now.

**Representative Kempenich:** What makes it hard is that we're trying to liberalize the rules. Are there any other states that have these types of rules? Have other states liberalized or dropped the requirements for investors and what's their outcome been?

**Karen Tyler:** The states have taken different approaches to this but all of them relying on the national standard. We do have a statutory obligation under 10-04-03 subsection 2 to be uniform; that's a requirement that this legislature has set that we must be as uniform as possible with other states and with the securities and exchange commission. So these national standards is what allows us to do this. There's so many types of securities, characteristics of securities offerings that it's really difficult to image coming up with a rule for every scenario in the securities offering. We have these policies that have been established. Some states take them all and put them in statute, some states have the statutory authority to apply them, some have a general rule that makes reference to them, some have them set forth in individual rules. In North Dakota the legislature has given the securities commissioner the statutory authority to apply them.

**Representative Kempenich:** If it was more than one operation I'd be a little more concerned about not doing something. I think we should at least reference something of how you're doing things.

**Representative Glasheim:** So you like her proposal of putting in the NAI rules?

**Representative Kempenich:** I know we do it with quite a few things we reference back to national organizations.

**Representative Glasheim:** Can you give us some language to look at that might be appropriate?

**Representative Kempenich:** If this was more than a one person deal it would be a issue; but, I haven't heard a big outcry. So far it's been mainly a Bismarck issue.

**Representative Glasheim:** The point is to protect investors from questionable activities.

**Representative Kempenich:** They aren't questionable.

**Representative Glassheim:** They must be in some way.

**Karen Tyler:** What we're talking about is non traded real estate investment trusts. It's non traded so there's no secondary market. If you own stock, you can call up your stock broker and say you want to sell and have cash 3 days later. With NTRIT, a non-traded real estate investment trust, you don't have that option. You're stuck with it until the NTRIT is willing to redeem the shares for you. For small investors who don't have a lot of income and don't have a lot of savings, it's not an appropriate investment. When you eliminate the suitability standards like that legislation did, that applies to all NTRITS. We have 2 non-traded North Dakota NTRIT's and over 200 TRITS that can be sold in the state. So the standards you'd set for a North Dakota NTRIT would probably be different than you'd set for a Florida NTRIT, etc. If we had to write a rule on this, we wouldn't be writing the rule to take into consideration the characteristics of a North Dakota NTRIT, we'd be writing it to be uniform with the rest of the country and to deal with the risks that are prevalent in the NTRIT industry. They retracted their support and submitted a letter saying they don't want prescriptive rules; we like that the commissioner has some discretion to work with us.

**Representative Thoreson:** Did they testify in the senate against the bill?

**Karen Tyler:** No they sent the letters.

**Representative Thoreson:** But they did go on record?

**Karen Tyler:** Yes. They didn't testify in person on the house side either.

**Representative Kempenich:** Read 10-04-03.2. You're guided more by your national organization than chapter 28 the way I'm reading this.

**Karen Tyler:** 10-04-08.1 is where you see our broad authority in regard to capital formation. You'll see the commission has the power place conditions, limitations, and restrictions. It's under that section that we could add language; subsection 11 that would allow us to make reference to the NASA set standards.

**Representative Kempenich:** It pretty much describes what you need to do. How often do you change a rule or directive?

**Karen Tyler:** We really haven't had to make formal changes because the discretion is there. We have the general power to place conditions, limitations and restrictions. That section goes on to say of some examples of what the commissioner may do.

**Representative Kempenich:** Is each one individualized? There's some standard for all of them I'm guessing. Do you get more specific as you go into the offering? Is each one custom tailored to that offering?

**Karen Tyler:** We have the policy on real estate investment trusts, mortgage programs, oil and gas programs, etc. So there are guidelines for each of these different types of securities offerings; but, each one has its own unique characteristics as well and then the company can work with us and we can place what would be considered reasonable

conditions. If the issuer doesn't think they're reasonable, they have the legal framework in which to challenge us and have their due process. We have never faced that legal challenge.

**Representative Kempenich:** You try to work with them as much as you can?

**Karen Tyler:** Absolutely.

**Representative Kempenich:** This issue that's brought in HB1140, is that more governed by your national organization or is that something that we're unique in as far as North Dakota?

**Karen Tyler:** That section 2 of HB1140 would be in place in every other state in the country except North Dakota if this bill passes. That section 2 is unprecedented; it's entirely non uniform. You'll not find this language anywhere else in the country as far as prohibition on the authority of the commissioner to protect investors in this manner. It's also unprecedented in North Dakota in that it creates this burden of proof that doesn't exist for other agencies. We have to prove through substantial evidence that the rule is necessary before we can write the rule.

**Representative Kempenich:** Why don't we get some language put on here; I do think we'd like a little more clarification.

**Representative Thoreson:** I agree. I think it's not going to solve the issue with a couple of people but that issue has been dealt with.

**Karen Tyler:** By the way the bill is drafted it's really hard to understand just by reading it what it really does.

**Representative Kempenich:** Whenever you see an agency that isn't necessarily forced to comply with chapter 28, you get a little nervous with it.

**Karen Tyler:** We don't regulate investors, so the idea that we're putting restrictions on investors; which I think is what is sort of being put out there as the message. The suitability thresholds that set forth limits on net income and net worth; those apply to the issuers. Who they can solicit. This places restrictions on what the stock broker can do in their conduct and what the NTRIT can do.

**Representative Kempenich:** The issuer can't go solicit. They can take a cold call though?

**Karen Tyler:** Yes. We've worked very closely with these NTRIT's for many years. We've made adjustments because we have the authority to do that.

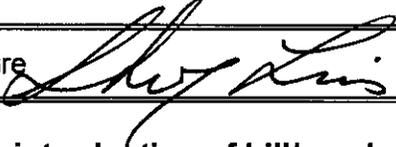
**Representative Kempenich:** Closed the discussion.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division  
Medora Room, State Capitol

SB2011  
March 23, 2011  
Recorder Job# 15899

Conference Committee

Committee Clerk Signature 

## Explanation or reason for introduction of bill/resolution:

A Bill for an Act to provide an appropriation for defraying the expenses of the securities commissioner

## Minutes:

**Chairman Thoreson:** Opened the discussion on SB2011.

**Representative Kempenich:** I see the securities commission brought down what we're looking at. There's an amendment that they brought forward that I think they'll do referring back to the national association and I will make a motion to move the amendment. See attached testimony 2011.3.23.11A.

**Chairman Thoreson:** This was an amendment that was provided by the department itself so it's not in legislative council form and style.

**Representative Dahl:** I'm just wondering if maybe the commissioner can explain a little more about what this language does?

**Karen Tyler, Commissioner, North Dakota Securities:** This new subsection would be #11. It's one of many different criteria that could be applied depending on the offering. It would not be applicable in every situation for us to utilize these NASA standards. That's why the "where applicable" language is there; because, it wouldn't come into play in every securities offering registration.

**Representative Dahl:** Do you already have the authority to apply these standards? I'm just wondering if it substantially changes anything.

**Karen Tyler:** It doesn't change anything that we do; it simply clarifies that we have the authority to apply these specific NASA standards and policies. We already have the broad authority under 10-04-08.1; but, it's become an issue that we've discussed before that there's an opinion out there that we should take all those standards and policies and write them into administrative rules. We have set forth in testimony that we already have the broad statutory authority; it was placed with the commissioner by design so that we can,

within a structured framework, apply some discretion and flexibility depending on the offering.

A voice vote was taken on the amendment and the amendment passed.

**Representative Kempenich:** Made a motion for a "Do Pass as Amended."

**Representative Klein:** Seconded the motion.

A roll call vote was taken and the motion carried 6 Yea's 0 Nay's 1 Absent.

**Chairman Thoreson:** Closed the discussion.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee  
Roughrider Room, State Capitol

SB 2011  
3/29/11  
16102

Conference Committee

Committee Clerk Signature

*Meredith Trachsel*

## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the securities commissioner.

## Minutes:

You may make reference to "attached testimony."

**Chairman Delzer:** We'll discuss SB 2011, the securities department.

**Representative Glassheim:** I move amend .01001.

**Representative Thoreson:** Second.

**Representative Glassheim:** This amendment is in response to concerns by one broker that the department ruled it was improper for him to solicit individuals below the national standards of income and assets for certain kinds of risky investments. The amendment makes explicit that the source of the regulations are policies established by state regulators through their national association, and their policy guidelines have been published and vetted nationally. Its adoption acknowledges current statutory authority and assures continued uniformity of regulation throughout the country, but also allows the securities department to make some allowances when the needs of capital formation do not conflict with the protection of consumers.

**Chairman Delzer:** Questions? Seeing none, we'll do a voice vote. Motion carries.

**Representative Glassheim:** I move Do Pass as Amended.

**Representative Kroeber:** Second.

**Chairman Delzer:** We had a bill that dealt with rulemaking; did you have any discussion about that?

**Representative Glassheim:** There was extensive discussion. That bill failed in the Senate.

**Representative Thoreson:** I think it received 0 votes in the Senate.

**Representative Glassheim:** The amendment was in response to that bill, with a slightly different approach to the concerns that put that bill forward.

**Chairman Delzer:** You're hoping this will accomplish the same thing?

**Representative Glassheim:** This should resolve the concern that was raised. The department's budget is flat, FTEs are flat, operating is flat, salaries are only increased by the 3 and 3 amount. It's a small, well run agency. They bring in about \$17 million in licensing and fees; they spend about \$0.12 for every dollar they bring in. That money goes to the general fund. There was a small audit finding that they had an administrative assistant who was both receiving money and sending out letters acknowledging receipt. The audit finding was that this was potentially a bad situation, and it has subsequently been split between two different employees.

**Chairman Delzer:** Are there any vacancies in the FTEs?

**Representative Glassheim:** I don't believe so.

**Chairman Delzer:** Further discussion? We'll call the roll for a Do Pass as Amended. The motion carries 21-0-0. Representative Glassheim will carry the bill.

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Appropriations Committee Roughrider Room, State Capitol

SB 2011  
4/4/11  
16319

Conference Committee

Committee Clerk Signature

*Meredith Tracholt*

### Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the securities commissioner.

### Minutes:

You may make reference to "attached testimony."

**Chairman Delzer:** Called the committee back to order. We have a bill that was moved back down to us from the floor, the securities commission bill, SB 2011. We put a Do Pass as Amended on it. If we want to have some discussion about what was done, we need to reconsider our actions where we put the Do Pass on it.

**Representative Thoreson:** I move we reconsider our Do Pass as Amended on SB 2011.

**Representative Brandenburg:** Second.

**Representative Thoreson:** In our section we had adopted some language, which was also adopted by this committee, dealing with an issue with the commissioner. If you go to the .02000 of the bill, section 2 has language starting line 21 of which there was some question by several other members on the floor about this language and the administrative rule making process, and so the bill was brought back to us. It's my understanding that there was an agreement to work through the rule making process, and that if this language could possibly come out all sides would be satisfied.

**Chairman Delzer:** Voice vote carries. We reconsidered our Do Pass as Amended, so we have the amended bill before us. If we want to take this amendment off, we need a motion to further amend to remove what we put on there before.

**Representative Thoreson:** I move we remove the language which currently is in section 2 of the bill, lines 19-23 of page 1 and lines 1-2 of page 2 of version .02000.

**Vice Chairman Kempenich:** Second.

**Chairman Delzer:** We have a motion to remove .01001 from SB 2011, so it will be the same bill that came over to us from the Senate, if the motion carries. Further discussion?

We'll do a voice vote, motion carries. We have SB 2011 before us without any amendments. What are your wishes?

**Vice Chairman Kempenich:** I move Do Pass.

**Representative Thoreson:** Second.

**Chairman Delzer:** We have a motion for a Do Pass, discussion?

**Representative Glassheim:** We just took off the amendment we had previously put on in this committee?

**Chairman Delzer:** Correct. If we adopt this and it is passed on the floor, the bill will be done. The Senate made no adjustments and we're not making any adjustments.

**Representative Thoreson:** That is correct.

**Chairman Delzer:** Further discussion on the motion for a Do Pass? We'll call the roll. Motion carries 20-0-1. Representative Glassheim will be the carrier.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee  
Roughrider Room, State Capitol

SB 2011

4/6/11

16404

Conference Committee

Committee Clerk Signature	<i>Meredith Trachott</i>
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## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the securities commissioner.

## Minutes:

You may make reference to "attached testimony."
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**Chairman Delzer:** Called the committee to order. Roll was called and a quorum was declared. We have SB 2011 before us. It's a bill we passed out with an amendment on it, it went to the floor, and the amendment was deemed approved. The bill was rereferred to us, we reconsidered our actions and took the amendment off, but we found out that we need a different action or we have to take the bill back up to the floor and ask the floor to remove the amendment, because they deemed it approved. We are going to need to reconsider our actions whereby we put the second Do Pass on. There is an amendment, .01002, which has been passed out, which adds the words 'fees or' to the bill on page 1 line 6.

**Representative Klein:** I move we reconsider our Do Pass.

**Representative Thoreson:** Second.

**Chairman Delzer:** Discussion. We'll call the roll for a reconsideration. Motion carries 20-0-1. We have the original bill before us. We have amendment .01002, what are your wishes?

**Representative Skarphol:** I move amendment .01002 to SB 2011.

**Representative Pollert:** Second.

**Chairman Delzer:** We have a motion to amend. Discussion? Seeing none, we'll do a voice vote. Motion carries. We have the amended bill before us.

**Representative Glassheim:** I move Do Pass as Amended.

**Representative Klein:** Second.

**Chairman Delzer:** We have a motion for Do Pass as Amended. Is there any discussion? Seeing none, we'll call the roll for a Do Pass as Amended on SB 2011. Motion carries 20-0-1 and Representative Glasheim will be the carrier.



March 24, 2011

VR  
3/29/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2011

Page 1, line 2, after "commissioner" insert "; and to create and enact a new subsection to section 10-04-08.1 of the North Dakota Century Code, relating to the examination of applications for approval or the registration by qualification of securities and authority of the securities commissioner"

Page 1, after line 16, insert:

**"SECTION 2.** A new subsection to section 10-04-08.1 of the North Dakota Century Code is created and enacted as follows:

When applicable, in examining an application for approval of a securities offering or in examining an application for registration by qualification of a securities offering, the commissioner may utilize the criteria set forth in statements of policy adopted by state securities regulators through the North American securities administrators association which are in effect when the commissioner exercises discretion under this section."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2011 - Securities Department - House Action**

This amendment creates a new subsection to Section 10-04-08.1 relating to the authority of the Securities Commissioner.

Date: 3/29

Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2011

House Appropriations Committee

Legislative Council Amendment Number 0/001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Glassheim Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Deizer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

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

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*voice vote carries*

Date: 3/29  
 Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2011

House Appropriations Committee

Legislative Council Amendment Number .01001

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Glassheim Seconded By Rep. Kroeber

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 21 No 0

Absent 0

Floor Assignment Rep. Glassheim

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

Date: 4/4  
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2011

House Appropriations Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Thoreson Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

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

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*voice vote carries*

Date: 4/4  
 Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2011

House Appropriations Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Thoreson Seconded By Rep. Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

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

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

remove  
 .01001 amendment  
 voice vote carries

Date: 4/4  
 Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2011

House Appropriations Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Kempenich Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl	X		Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein					
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Rep. Glassheim

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

Date: 4/6  
Roll Call Vote #: 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2011

House Appropriations Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Klein Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl			Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment \_\_\_\_\_

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

11.8146.01002  
Title.03000

Prepared by the Legislative Council staff for  
Representative Delzer  
April 6, 2011

VR  
4/6/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2011

In lieu of the amendments adopted by the House as printed on page 1211 of the House Journal, Senate Bill No. 2011 is amended as follows:

Page 1, line 6, after the second "from" insert "fees or"

Renumber accordingly

Date: 4/6  
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2011

House Appropriations Committee

Legislative Council Amendment Number 01002

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Skarphol Seconded By Rep. Pollert

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Representative Nelson		
Vice Chairman Kempenich			Representative Wieland		
Representative Pollert					
Representative Skarphol					
Representative Thoreson			Representative Glassheim		
Representative Bellew			Representative Kaldor		
Representative Brandenburg			Representative Kroeber		
Representative Dahl			Representative Metcalf		
Representative Dosch			Representative Williams		
Representative Hawken					
Representative Klein					
Representative Kreidt					
Representative Martinson					
Representative Monson					

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

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

voice vote carries

Date: 4/6  
 Roll Call Vote #: 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2011

House Appropriations Committee

Legislative Council Amendment Number .01002

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Glassheim Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Nelson	X	
Vice Chairman Kempenich	X		Representative Wieland	X	
Representative Pollert	X				
Representative Skarphol	X				
Representative Thoreson	X		Representative Glassheim	X	
Representative Bellew	X		Representative Kaldor	X	
Representative Brandenburg	X		Representative Kroeber	X	
Representative Dahl			Representative Metcalf	X	
Representative Dosch	X		Representative Williams	X	
Representative Hawken	X				
Representative Klein	X				
Representative Kreidt	X				
Representative Martinson	X				
Representative Monson	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Rep. Glassheim

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

**REPORT OF STANDING COMMITTEE**

**SB 2011: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2011 was placed on the Sixth order on the calendar.

Page 1, line 2, after "commissioner" insert "; and to create and enact a new subsection to section 10-04-08.1 of the North Dakota Century Code, relating to the examination of applications for approval or the registration by qualification of securities and authority of the securities commissioner"

Page 1, after line 16, insert:

**"SECTION 2.** A new subsection to section 10-04-08.1 of the North Dakota Century Code is created and enacted as follows:

When applicable, in examining an application for approval of a securities offering or in examining an application for registration by qualification of a securities offering, the commissioner may utilize the criteria set forth in statements of policy adopted by state securities regulators through the North American securities administrators association which are in effect when the commissioner exercises discretion under this section."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2011 - Securities Department - House Action**

This amendment creates a new subsection to Section 10-04-08.1 relating to the authority of the Securities Commissioner.

**REPORT OF STANDING COMMITTEE**

**SB 2011, as amended: Appropriations Committee (Rep. Delzer, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2011, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 1211 of the House Journal, Senate Bill No. 2011 is amended as follows:

Page 1, line 6, after the second "from" insert "fees or"

Renumber accordingly

2011 TESTIMONY

SB 2011

Senate Bill 2011

Testimony of North Dakota Securities Commissioner Karen Tyler

Before the Senate Appropriations Committee

January 6, 2011

Mr. Chairman and Members of the Committee, Good Morning. I am Karen Tyler, the State Securities Commissioner. Also with me this morning from the Department are Mike Daley, the Department's attorney and Deputy Commissioner, Diane Lillis, our franchise examiner and budget manager, and Kelly Mathias, our Investigations Supervisor. It is a pleasure to share some time with you this morning to discuss the budget appropriation for the North Dakota Securities Department, and to answer any questions you may have regarding our budget request as set forth in Senate Bill 2011.

The Department's mandate is to protect the North Dakota Investor through the administration of the North Dakota Securities Act (chapter 10-04 of the ND Century Code). We deliver on this mandate through our efforts in four functional areas:

- 1) We regulate the Capital Formation Process
- 2) We register Securities Industry Firms and Professionals who want to do business in the state
- 3) We conduct Examinations, Investigations and take Enforcement Actions as necessary and appropriate
- 4) And we produce and deliver Investor Education and Financial Literacy programs

The North Dakota Securities Department is a small agency, with 9 full time employees. We continue to be a profitable agency, generating over \$17 million dollars in revenue last biennium and we estimate approximately \$17 million dollars in the coming biennium. Over the last several budget cycles, the agency's spending has averaged only 10 - 12 cents of every revenue dollar generated.

Attached to my written testimony you will find some key statistics from our various areas of functionality in which I thought you might take interest. I won't comment on them now, but if you have any questions I of course will be happy to answer them or get you additional information.

#### **BUDGET REQUEST**

For our 2011-2013 budget, we are not requesting an increase in our general fund operating appropriation. It is being held at \$706,441.00. The Salary and Wages appropriation request has been increased by \$120,858.00, which reflects the adjustment applied by the office of Management and Budget for salary and benefit cost increases included in the executive budget. The Department is not requesting any additional FTE positions. Our total general fund budget request is \$1,909,220.00.

The agency's special fund appropriation request, reflected on line 14 of page 1 of SB 2011, also is not increasing, and is held at the current biennium level of \$317,199.00. As a refresher and for new committee members, the agency's special fund is restricted to funding the financial literacy and education expenses of the Department.

## **FUTURE CRITICAL ISSUES**

There are a number of critical issues the Department has identified that we believe will impact our constituents, reinforce the necessity of maintaining our current funding levels, and drive the allocation of our resources.

**Fraud Against Seniors** – the majority of our cases involve the victimization through fraud or misconduct of investors over the age of 55. We expect this trend to continue. Whether through education efforts that help prevent fraud and abuse or through enforcement efforts to help victims recover assets, we must be adequately equipped to assist our seniors. They have less time to recover and rebuild and the effects of financial fraud can be especially destructive, financially and emotionally, for our older citizens.

**Need for Improved Personal Financial Capability** – People will continue to become increasingly responsible for their future financial security with a continued shift by employers from defined benefit to defined contribution plans and continued uncertainty over the country's social security system. More people may turn to the investment industry for assistance, others will manage assets on their own, but either way people need to develop improved financial capability to make good money decisions and recognize and avoid fraud.

**More investors means more enforcement cases.**

**Evolution of Securities Products, Services and Delivery Mechanisms** – in the last several decades, financial engineering and evolution outpaced/outmaneuvered financial regulation – it lead to the near collapse of our financial markets at the end of 2008 and we are still dealing with the aftermath today. With this industry it isn't a question of "if" another large scale, systemic disruption will occur, but a question of when it will occur and what device, instrument or trading practice it will involve. We have some of the brightest minds coming out of the best schools

landing in an arena where the compensation models defy explanation and the personal wealth building potential is unlimited and driven by incentives that don't necessarily align the interests of investment firms with those of their clients. Main street investors reside far away from the laboratories of financial engineering and innovation, but due to the interconnectedness of firms, products, and markets, they ultimately feel the effects when it goes awry. Regulators must be equipped to keep up.

**Implementation of Dodd-Frank Regulatory Reform Legislation** – State regulators will be taking on oversight of more Investment Advisor firms and must have the resources to effectively regulate them. (AUM split for SEC v. State regulation is being moved from \$25 million to \$100 million).

Our ability to manage and respond to these critical issues is of course dependent on adequate funding. The ability to execute effective investigations and achieve successful enforcement action outcomes, to the benefit of the harmed ND Investor, will continue to be dependent on the availability of adequate funding, access to training resources, and the ability to contract as needed with outside legal and professional services.

#### **OUTLOOK FOR INDUSTRY/DEPARTMENT REVENUE**

The revenue of the department is to a degree tied to the health of the investment industry. Over half of our revenue is derived from the registration of securities agents (stockbrokers) and investment advisor representatives.

We are holding our revenue projections at \$17 million for the upcoming biennium. That being said, in the last quarter of 2010, we saw a growing number of analysts predicting the financial services industry will enter into another period of contraction in 2011, after turning in record performances in 2009 and 2010, and the industry will begin to layoff employees. It is expected that layoffs will come in back office operations, proprietary trading and other trading desks, merger and acquisition and underwriting departments. It is of course possible that this predicted contraction, should it occur, could reach the frontlines, the stockbrokers and investment advisers, (the individuals that we register) but these are the folks that actually have the client relationships, that have gathered the assets, which provides them with a level of job security other employees don't have. So while there has been much turmoil in the industry and possibly more to come, and while a number of firms have failed, and there have been numerous mergers and acquisitions, the number of stockbrokers and investment adviser representatives has not been negatively affected, and we are comfortable with our static revenue projections.

## SB 2011 – Attachment to Commissioner Tyler’s Testimony

### CAPITAL FORMATION

As of December 31, 2010:

50 North Dakota companies have issued securities for the purpose of raising capital. The aggregate original amount of the securities offering totals \$180,529,407.00.

Detailed information about the issuers and offerings can be found on our website, [ndsecurities.com](http://ndsecurities.com).

### REGISTRATION OF SECURITIES FIRMS AND PROFESSIONALS

As of December 31, 2010:

Broker-Dealers	1,159
Investment Advisors	630
Broker-Dealer Agents	65,661
Investment Advisor Reps	1,381

### INVESTIGATIONS, EXAMINATIONS, AND ENFORCEMENT

As of December 31, 2010:

New Enforcement Cases Opened	88
Average Open Cases	45-50
Funds Ordered Returned to Investors	\$842,735
Penalties Assessed	\$666,378

Most prevalent violations investigated have been Unregistered Individuals, Private Placement Fraud, Ponzi Schemes, Misrepresentations, Lack of Suitability.

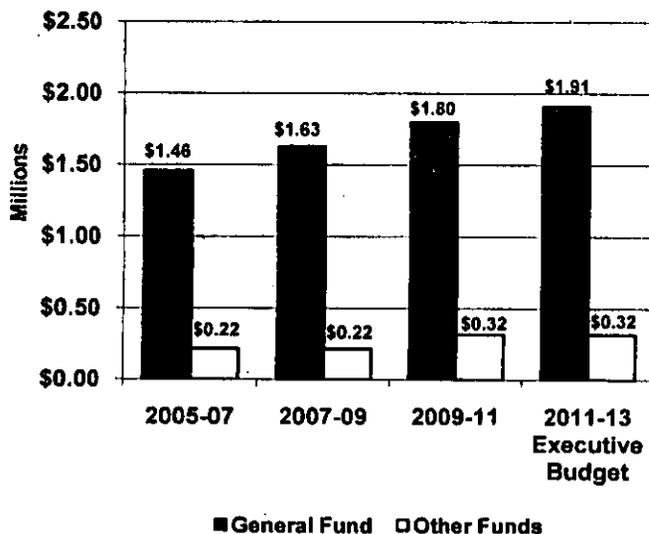
6 individuals have been charged or prosecuted criminally as a result of referrals from the Securities Department to criminal authorities.

**Department 414 - Securities Department**  
**Senate Bill No. 2011**

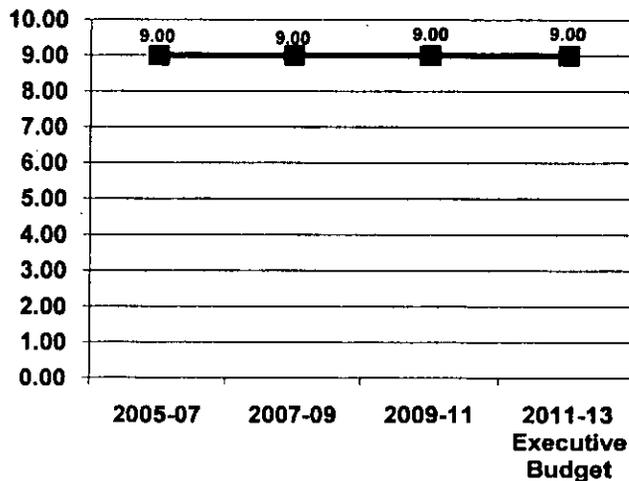
	FTE Positions	General Fund	Other Funds	Total
2011-13 Executive Budget	9.00	\$1,909,220	\$317,199	\$2,226,419
2009-11 Legislative Appropriations	9.00	1,798,362	317,199	2,115,561 <sup>1</sup>
Increase (Decrease)	0.00	\$110,858	\$0	\$110,858

<sup>1</sup>The 2009-11 appropriation amounts include \$10,000 from the general fund for the agency's share of the \$16 million funding pool appropriated to the Office of Management and Budget for special market equity adjustment for executive branch employees.

**Agency Funding**



**FTE Positions**



**Ongoing and One-Time General Fund Appropriations**

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2011-13 Executive Budget	\$1,909,220	\$0	\$1,909,220
2009-11 Legislative Appropriations	1,798,362	0	1,798,362
Increase (Decrease)	\$110,858	\$0	\$110,858

**First House Action**

Attached is a summary of first house changes.

**Executive Budget Highlights**  
**(With First House Changes in Bold)**

No major changes for this agency as compared to the 2009-11 legislative appropriations.

**Continuing Appropriations**

**Investor education and technology fund** - North Dakota Century Code Section 10-04-03 - This fund is used primarily for investor education and receives funding from tuition, grants, donations, and certain civil penalties assessed by the commissioner.

**Significant Audit Findings**

The operational audit for the Securities Department conducted by the State Auditor's office during the 2009-10 interim included the following significant audit finding:

- The Securities Department does not have proper controls surrounding the collection of revenue.

**Major Related Legislation**

No major related legislation has been introduced affecting this agency.

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2011 - Funding Summary**

	<b>Executive Budget</b>	<b>Senate Changes</b>	<b>Senate Version</b>
Securities Department			
Salaries and wages	\$1,519,978		\$1,519,978
Operating expenses	<u>706,441</u>	<u>                    </u>	<u>706,441</u>
Total all funds	\$2,226,419	\$0	\$2,226,419
Less estimated income	<u>317,199</u>	<u>0</u>	<u>317,199</u>
General fund	\$1,909,220	\$0	\$1,909,220
FTE	9.00	0.00	9.00
Bill Total			
Total all funds	\$2,226,419	\$0	\$2,226,419
Less estimated income	<u>317,199</u>	<u>0</u>	<u>317,199</u>
General fund	\$1,909,220	\$0	\$1,909,220
FTE	9.00	0.00	9.00

**Senate Bill No. 2011 - Securities Department - Senate Action**

The Senate did not change the executive recommendation for the Securities Department.

2011.3.3.11A

**Senate Bill 2011**

**Testimony of North Dakota Securities Commissioner Karen Tyler**

**Before the House Appropriations Committee**

**Government Operations Division**

**March 3, 2011**

Mr. Chairman and Members of the Committee, Good Afternoon. I am Karen Tyler, the State Securities Commissioner. Also with me this afternoon from the Department are Mike Daley, the Department's attorney and Deputy Commissioner, and Diane Lillis, our franchise examiner and budget manager. It is a pleasure to share some time with you this afternoon to discuss the budget appropriation for the North Dakota Securities Department, and to answer any questions you may have regarding our budget request as set forth in Senate Bill 2011.

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#### **BUDGET REQUEST**

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Our total general fund budget request is \$1,909,220.00.

The agency's special fund appropriation request, reflected on line 14 of page 1 of SB 2011, also is not increasing, and is held at the current biennium level of \$317,199.00. As a refresher and for new committee members, the agency's special fund is restricted to funding the financial literacy and education expenses of the Department.

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– it lead to the near collapse of our financial markets at the end of 2008 and we are still dealing with the aftermath today. With this industry it isn't a question of "if" another large scale, systemic disruption will occur, but a question of when it will occur and what device, instrument or trading practice it will involve. Main street investors reside far away from the laboratories of financial engineering and innovation, but due to the interconnectedness of firms, products, and markets, they ultimately feel the effects when it goes awry. Regulators must be equipped to keep up.

**Implementation of Dodd-Frank Regulatory Reform Legislation** – State regulators will be taking on oversight of more Investment Advisor firms and must have the resources to effectively regulate them. (AUM split for SEC v. State regulation is being moved from \$25 million to \$100 million)

**HB 1140** – This legislation affects the way the Department regulates the process of capital formation, most specifically capital formation by small North Dakota companies. Currently, under the system of regulation established by the legislature in 1959, the Commissioner has broad statutory authority in the area of capital formation and works within a regulatory framework that facilitates uniformity, but also affords some flexibility when working with North Dakota companies seeking to raise capital through the sale of securities. If this legislation passes, it will require the Department to convert approximately 30 statements of policy and guidelines into administrative rules by January 1, 2012. In doing so, we move away from the principles based, flexible system of regulation established by the legislature in 1959 and toward a more rigid, prescriptive rules based system of regulation. In addition to being more burdensome

for small businesses, the Securities Department does not have the human or monetary resources to manage this undertaking and will have to contract with outside legal counsel. We estimate, conservatively that the fiscal impact will be approximately half a million dollars.

Our ability to manage and respond to these critical issues is of course dependent on adequate funding. The ability to execute effective investigations and achieve successful enforcement action outcomes, to the benefit of the harmed ND Investor, will continue to be dependent on the availability of adequate funding, access to training resources, and the ability to contract as needed with outside legal and professional services.

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This concludes my written testimony. I do appreciate your attention and consideration of our budget request, and would be happy to answer any questions.

## **SB 2011 – Attachment to Commissioner Tyler’s Testimony**

### **CAPITAL FORMATION**

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Most prevalent violations investigated have been Unregistered Individuals, Private Placement Fraud, Ponzi Schemes, Misrepresentations, Lack of Suitability.

6 individuals have been charged or prosecuted criminally as a result of referrals from the Securities Department to criminal authorities.

March 24, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2011

Page 1, line 2, after "commissioner" insert "; and to create and enact a new subsection to section 10-04-08.1 of the North Dakota Century Code, relating to the examination of applications for approval or the registration by qualification of securities and authority of the commissioner"

Page 1, after line 16, insert:

"**SECTION 2.** A new subsection to section 10-04-08.1 of the North Dakota Century Code is created and enacted as follows:

When applicable, in examining an application for approval of a securities offering or in examining an application for registration by qualification of a securities offering, the commissioner may utilize the criteria set forth in statements of policy adopted by state securities regulators through the North American securities administrators association which are in effect when the commissioner exercises discretion under this section."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**Senate Bill No. 2011 - Securities Department - House Action**

This amendment creates a new subsection to Section 10-04-08.1 relating to the authority of the Securities Commissioner.

**PROPOSED AMENDMENT TO SENATE BILL NO. 2011**

**FOR HOUSE APPROPRIATIONS – GOVERNMENT OPERATIONS DIVISION**

Example from Insurance Code - Insurance Commissioner's authority to conduct examinations under N.D.C.C. §§ 26.1-03-19.2 and 26.1-03-19.3 using criteria from NAIC Examiners' Handbook:

**26.1-03-19.2. Authority, scope, and scheduling of examinations.**

1. The commissioner or any of the commissioner's examiners may conduct an examination under this chapter of any company whenever the commissioner in the commissioner's sole discretion deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider the matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners' financial condition and market conduct handbook adopted by the national association of insurance commissioners and in effect when the commissioner exercises discretion under this section.

\* \* \*

**26.1-03-19.3. Conduct of examinations.**

1. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue a letter appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The commissioner may also employ other guidelines or procedures as the commissioner may deem appropriate.

\* \* \*

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Renumber accordingly

2011.3.23.11A

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