Bill as Introduced

HB 816 – AS AMENDED BY THE HOUSE

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2003 SESSION

03-0896
05/01

HOUSE BILL ***816***

AN ACT making technical corrections to the securities laws.

SPONSORS: Rep. Spiess, Hills 47; Rep. Welch, Rock 79; Sen. Peterson, Dist 11

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill:

I. Narrows the definition of agent to exclude certain individuals who provide the secretary of state with securities notice filings.

II. Defines broker-dealer and agent responsibility with respect to the suitability of recommended securities.

III. Inserts authorization to charge $100 per diem and other expenses related to a securities broker examination.

IV. Shortens the time period in which the secretary of state may consider a license application withdrawn for lack of information.

V. Clarifies and makes technical corrections to the filing requirements for the registration of securities.

VI. Authorizes the secretary of state or the attorney general to perform certain investigatory and enforcement functions relative to securities regulation.

VII. Increases the fine for violation of a cease and desist order.

VIII. Provides that the offeror and target company shall be parties to any public hearing relative to a security takeover.

This bill is a request of the department of state.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03-0896
05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT making technical corrections to the securities laws.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Securities; Definition of Agent. Amend RSA 421-B:2, II(d) and (e) to read as follows:

(d) Effecting transactions in securities registered by notification under RSA 421-B:12 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; [~~or~~]

(e) Effecting other transactions, if such individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and upon application, such individual is specifically authorized by name in an order issued by the secretary of state[~~.~~]*; or*

(f) Effecting transactions under RSA 421-B:11, I-a(e), if such individual is an officer or director of the issuer to whom no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

2 New Section; Securities; Suitability of Recommendation; Reasonable Grounds Required. Amend RSA 421-B by inserting after section 3 the following new section:

421-B:3-a Suitability of Recommendation; Reasonable Grounds Required.

I. In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs.

II. Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

(a) The customer's financial status.

(b) The customer's tax status.

(c) The customer's investment objectives.

(d) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer.

3 New Paragraphs; Post-Licensing Provisions; Confidentiality; Examination Expenses. Amend RSA 421-B:9 by inserting after paragraph V the following new paragraphs:

VI. All reports pursuant to this section shall be absolutely privileged and although filed in the department as provided in paragraph V shall nevertheless not be for public inspection. The comments and recommendations of the examiner shall also be deemed confidential information and shall not be available for public inspection, except as the secretary of state in his or her discretion may deem advisable.

VI-a. The broker-dealer or other person examined pursuant to this section shall bear the expense of the examination. Such expenses shall be limited to a reasonable per diem allowance for compensation and expenses as determined by the secretary of state. The per diem allowance shall not exceed $100. Notwithstanding any other provision of law, domestic issuer-dealers shall be exempt from bearing the expense of examinations conducted pursuant to this section, except for the mileage expenses to and from the examination incurred by the department.

4 Securities; Denial, Revocation, and Withdrawal of License. Amend RSA 421-B:10, IV to read as follows:

IV. If the secretary of state finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the secretary of state may by order revoke the license or deny the application. The secretary of state may deem abandoned and withdrawn any application for licensure made pursuant to this chapter, if any applicant fails to respond in writing within [~~180~~] ***90*** days to a written request from the secretary of state requesting a response. [~~Such request shall be sent via certified mail to the last known address of the applicant.~~]

5 Registration of Securities; Filing Requirements. Amend RSA 421-B:11, I-a (e)(4) and (5) to read as follows:

(4) The name of any registered broker-dealer who will effect transactions in this state; [~~and~~]

(5) The fee pursuant to RSA 421-B:31, I(h)[~~.~~] ***; and***

(6) A statement indicating the date on which the first sale in this state of covered securities under section 18(b)(4)(D) of the Securities Act of 1933 occurred.

6 Regulation of Securities; Provisions Applicable to Registration Generally. Amend RSA 421-B:15, II-a to read as follows:

II-a. [~~Every corporation and partnership having securities registered in this state shall, within 120 days after the close of its fiscal year, file with the secretary of state annually a financial statement audited and certified by an independent certified public accountant. The audited statement shall be prepared in accordance with generally accepted accounting principles and such other standards as the secretary of state shall adopt by rule.~~] Issuers of securities registered under

this chapter shall [~~also~~] provide quarterly financial reports within 60 days of the end of each quarter to their shareholders, partners, and members. Such quarterly reports need not be independently audited. [~~Filings may be made through the Securities and Exchange Commission's EDGAR system. The secretary of state may extend the time for filing such statement for good cause shown.~~]

7 New Paragraph; Securities; Provisions Applicable to Registration Generally; Criteria for Withdrawal of Registration Statement. Amend RSA 421-B:15 by inserting after paragraph XIV the following new paragraph:

XV. The secretary of state may deem abandoned and withdrawn any registration statement submitted pursuant to this chapter if any registrant fails to respond in writing within 90 days to a written request from the secretary of state requesting a response.

8 Securities Regulation; Exemption from Registration; Withdrawal of Registration. Amend RSA 421-B:17, III to read as follows:

III. The secretary of state may issue an order requiring any person who claims the benefit of an exemption with respect to a specific security or transaction, to show cause why the exemption should not be revoked. The order shall be calculated to give reasonable notice of the time and place for the revocation hearing, and shall state the reasons for the entry of the order. The secretary of state may by order summarily suspend, deny or revoke an exemption pending final determination of any order to show cause, provided the secretary of state finds the public interest will be irreparably harmed by delay in issuing such an order. If an exemption is denied, revoked or suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 10 days of the issuance. The secretary of state may deem abandoned and withdraw any filing made pursuant to this section, if any person fails to respond in writing within [~~180~~] ***90*** days, to a written request from the secretary of state requesting a response[~~, such request having been sent via certified mail to the last known address of the person making the filing~~].

9 Securities; Investigations and Subpoenas; Application by Secretary of State. Amend RSA 421-B:22, III to read as follows:

III. In the event that a person refuses to obey a subpoena issued to him ***or her*** or any order or determination the secretary of state is authorized to make, the superior court, upon application by the attorney general ***or secretary of state or any officer designated by the secretary of state***, may issue to the person an order directing him ***or her*** to appear before the attorney general ***or secretary of state***, or the officer designated by him ***or her***, [~~thereto~~] to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

10 Securities; Cease and Desist Orders; Injunctions; Receivers. Amend RSA 421-B:23 to read as follows:

421-B:23 Cease and Desist Orders; Injunctions; Receivers.

I. Whenever it appears to the secretary of state that any person has engaged or is about to

engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter:

(a) The secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing on the order and shall state the reasons for the entry of the order. ***The order shall be served at the last known address of such person. Service of the order and publication of the order in a newspaper of general circulation in the area of the last known address of such person shall serve to duly notify the person of the order and of the right to a hearing on the order.*** A hearing shall be held not later than 10 days after the request for such hearing is received by the secretary of state after which and within 20 days of the date of the hearing the secretary of state shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the rules adopted pursuant to this chapter. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him ***or her*** upon consideration of the cease and desist order, the allegations of which may be deemed to be true. If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt of such order, ***but in any case no later than 60 calendar days from the issuance of the order,*** then such person shall likewise be deemed in default, and the order shall, on the thirty-first day ***from the receipt of the order and no later than the sixty-first day from the issuance of the order***, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown. The secretary of state may adopt rules of procedure concerning all proceedings conducted pursuant to this section;

(b) The attorney general ***or secretary of state or his or her designee*** may, with or without prior administrative action by the secretary of state, bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted [~~and a receiver may be appointed for the defendant or the defendant's assets~~]. ***In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.*** The court shall not require the attorney general ***or secretary of state*** to post a bond; and

(c) The attorney general ***or secretary of state or his or her designee*** may bring an action [~~in the name of the state~~] for injunctive relief and civil penalties for violations of any provision of this chapter. In any action brought by the attorney general ***or secretary of state or his or her***

designee, the civil penalties shall not exceed $5,000 for each violation in the case of knowing violations, or $2,500 for each violation in the case of negligent violations, and each of the acts specified shall constitute a separate violation. The action may be brought in the superior court of the county in which the defendant resides or has his ***or her*** principal place of business, or, with the consent of the parties or if the defendant is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

II. In a proceeding in superior court under this section where the state prevails, the secretary of state and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

11 New Paragraph; Administrative Penalty; Investor Education; Fine for Violation of Cease And Desist Order. Amend RSA 421-B:26 by inserting after paragraph III-a the following new paragraph:

III-b. Notwithstanding any provision to the contrary, violation of a cease and desist order may result in an administrative fine not to exceed $2500 per day for as long as such violation continues. This fine shall be in addition to any other penalties provided.

12 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(f) to read as follows:

(f) Registration fee prior to offers or sales of securities in this state	2/10 of one percent of the offering value of the [~~issue~~] ***securities offered in the registration statement*** provided said fee shall not be more than $1,050, plus a $200 non-refundable examination fee.

13 Securities; Fees; Reference Change. Amend RSA 421-B:31, I(k) to read as follows:

(k) Initial notice filing fee prior to offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.	2/10 of one percent of the offering value of the [~~issue~~] ***securities offered in the registration statement***, provided said fee shall not be more than $1,050, plus a $200 non-refundable initial notice fee.

14 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(f) to read as follows:

(f) Annual notice filing fee for offers or sales of covered securities under sections 18(b)(4)(C) and 18(b)(3) of the Securities Act of 1933.	2/10 of one percent of the offering value of the [~~issue~~] s***ecurities offered in the registration statement***, provided said fee shall not be more than $1,050

15 Securities; Fees; Reference Change. Amend RSA 421-B:31, II(i) to read as follows:

(i) Annual registration fee for securities offered in this state, due one year from the effective date of registration, and each year thereafter:	2/10 of one percent of the offering value of the [~~issue~~] ***securities offered in the registration statement***, provided said fee shall not be more than $1,050.

16 Securities; Fees; Reference Change. Amend the introductory paragraph of RSA 421-B:31, III to read as follows:

III. In addition to any other penalties, provisions, or fees prescribed under this chapter, a late filing fee of 1/10 of one percent of the offering value of (1) [~~a registered securities issue~~] ***securities offered in the registration statement***, or (2) an offering of federal covered securities, provided said fee shall not be more than $525, shall be imposed if:

17 Disclosure of Security Takeovers; Requirement of Financial Disclosure; Clarification of Material Terms. Amend RSA 421-A:3 to read as follows:

421-A:3 Requirement of Financial Disclosure. No offeror shall make a takeover bid unless as soon as practicable on the date of commencement of the takeover bid [~~he~~] ***the offerer*** files with the secretary of state and the target company a registration statement containing the information required by RSA 421-A:4 and publicly discloses the material terms of the offer***, including the total number and class of securities sought in the offer and the type and amount of consideration offered to security holders***. The registration statement filed with the secretary of state shall be accompanied by such fees as may be prescribed under RSA 421-A:9. ***The offeror shall provide the target company with any amendments or revisions to the registration statement at the same time that such amendments or revisions are filed with the secretary of state.***

18 Registration Statements for Takeovers; Contents of Registration Statement. Amend RSA 421-A:4 to read as follows:

421-A:4 Contents of Registration Statement. The registration statement required to be filed pursuant to RSA 421-A:3 shall include:

I. Copies of all prospectuses, brochures, advertisements, circulars, letters or other matter by means of which the offeror proposes to disclose to offerees all information material to a decision to accept or reject the offer[~~;~~].

II. The identity and material background information of all persons on whose behalf the acquisition of any equity security of the target company has been or is to be effected, including, but not limited to:

(a) If the offeror is a corporation, complete information on the organization and operations of offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its

long term debt, audited balance sheets and income statements for each of the 3 most recent fiscal years and, if the most recent balance sheet and income statement are for a period ending more than 90 days prior to the date of filing, an interim balance sheet and income statement covering the period from the date of the last audited balance sheet and income statement filed hereunder to a date within 90 days of the date of filing, ***an explanation of losses reflected in the required income statements,*** a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, ***prior acquisitions,*** a description of ***threatened legal action, threatened legal proceedings, or*** pending legal proceedings, [~~other than routine litigation,~~] to which the offeror or any of its subsidiaries, ***officers, directors, or key personnel*** is ***or may be*** a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past 5 years, ***a listing of all properties leased by the offeror, a listing of all intellectual property rights owned by the offeror, the number of employees of the offeror, the wages, salaries and other remuneration of the management of the offeror,*** the names of all directors [~~and~~], executive officers ***and key personnel, including principal and beneficial owners of greater than 10 percent of the offeror's stock,*** together with biographical summaries of each for the preceding 5 years, to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past 3-years, or in any proposed material transactions to which the offeror or any of its subsidiaries was or is to be a party[~~;~~].

(b) If the offeror is not a corporation, information concerning the background of the person, including:

(1) His or her current principal occupation and employment and the name, principal business and address of any corporation or other organization in which the employment or occupation is conducted.

(2) Material business activities and affiliations during the past 3 years, ***giving the starting and ending dates of each and the name, principal business, and address of any corporation or other organization in which the occupation, position, office, employment, or affiliation was conducted.***

(3) [~~and~~] A description of any material pending legal or administrative proceeding in which he ***or she*** is a party [~~;~~].

III. The source and amount of ***all*** funds or other consideration, ***whether direct or indirect*** used or to be used in acquiring any equity security, including a statement describing any securities, other than the existing capital stock or long term debt of the offeror, which are being offered in exchange for the equity securities of the target company, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements, [~~and~~] ***including*** the names of the parties from whom the

funds were borrowed, ***the term, the collateral, the stated and effective interest rates, and any other material terms or conditions of the loan. Any plans or arrangements to finance or repay the loan, or if no such plans or arrangements exist, shall be disclosed. Any alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through, or the fact that no such arrangements or plans exist, shall be disclosed.***

IV. A statement of any plans or proposals which the offeror, upon gaining control, may have to liquidate the target company, sell its assets, effect a merger or consolidation of it, or make any other major change in its business, corporate structure, management personnel, or policies of employment[;].

V. The number of shares of any equity security of the target company of which each offeror is beneficial or record owner or has a right to acquire, directly or indirectly, together with the name and address of each person defined in this chapter as an offeror[;].

VI. Particulars as to any contracts, arrangements or understandings to which an offeror is party with respect to any equity security of the target company, including, without limitation, transfers of any equity security, joint ventures, loans or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into[;].

VII. A description of any court or governmental proceeding in which the offer has been disapproved or enjoined and of any pending court or governmental proceeding in which it is alleged that the offer does not comply with the provisions of the applicable laws or regulations[;].

VIII. A statement of which other tender offers, subject to section 13, clause (d) or proxy contests subject to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), as amended, the offeror has engaged in within 5 years prior to the offer[;].

IX. A statement of whether any officer or director of the offeror or the offeror has:

(a) Been convicted within the prior 10 years of a felony ***or within the prior 5 years in any other criminal proceeding, excluding traffic violations or similar misdemeanors. If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of the court, and the penalty imposed or other disposition in the case***[;]; or

(b) Been subject of a judgment, ~~or~~ decree ***or final order, including a description of the proceeding with a summary of the terms of judgment, decree, or final order,*** entered by a court or governmental agency with respect to laws relating to:

(1) Antitrust,

(2) Fair employment practices,

(3) Purchase or sale of securities, or

(4) Environmental protection, or

(c) Been subject of a disciplinary action such as, but not limited to, a censure, reprimand, or warning, by a non-governmental body commonly known as a self-regulatory organization, or SRO, such as, but not limited to, the National Association of Securities Dealers, the New York Stock Exchange, or the American Stock Exchange[~~; and~~].

X. A statement of risk factors related to the transaction for security holders of the target company.

[~~X~~] *XI.* Such other and further documents, exhibits, data, and information as may be required by regulations of the secretary of state or as may be necessary to make fair, full, and effective disclosure to offerees of all information material to a decision to accept or reject the offer. If any material change occurs in the facts set forth in the registration statement required by RSA 421-A:3, the offeror who filed such statement shall promptly notify the secretary of state and the target company of such change and shall amend the registration statement to reflect such change within 10 days of the change.

19 Disclosure of Security Takeovers; Scheduling of Public Hearing; Offeror and Target Companies As Parties. Amend RSA 421-A:5 to read as follows:

421-A:5 Scheduling of Public Hearing. Within 20 days after the filing of a registration statement pursuant to this chapter, the secretary of state shall commence his investigation and order a hearing, if he determines a hearing is necessary or appropriate for the protection of offerees in this state, for the purpose of determining compliance with the requirements of this chapter and whether the offeror has provided full and fair disclosure to the offerees of all material information concerning the takeover bid including the filing of a complete and accurate registration statement. Any [~~initial~~] hearing shall *include the offeror and the target company as parties, and shall* commence within 25 days after the filing of a registration statement.

20 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: April 22, 2003
Time: 1:15 p.m.
Room: 103 LOB

The Senate Committee on Banks held a hearing on the following:

HB 816 making technical corrections to the securities laws.

Members of Committee present: Senator Flanders
Senator Barnes

The Chair, Senator Robert B. Flanders, opened the hearing.

I'd like to open the hearing on HB 816. Is there anyone here wishing to testify on HB 816?

Mr. Connolly: Good afternoon. My name is Mark Connolly, Director of Securities Regulation for the Secretary of State's office. Joining me is Jeff Spill who is head of enforcement for the Securities Bureau and Kevin Moquin who heads up our auditing function in the bureau. HB 816 we're characterizing as basically technical corrections to our current securities laws which are 421:A which is the business takeover statute and 421:B which is the general securities enforcement law in the state. I'm going to ask Jeff to speak to some of the highlights of the bill. Essentially what we believe it does is it makes our operation more efficient in terms of how we operate. It tightens up some of the administrative procedures under which we act. It also allows us to act a little more quickly in terms of enforcement activities that we currently engage in. Having said that I'll ask Jeff to jump in and kind of give an overview of the bill.

Jeff Spill, Head of Enforcement for the Secretary of State: As you can see the bill is divided into sections. Section one deals with the sales side of securities. When you think of securities law you think of two sides. There is the sales side and there is the issuing side. When agents sell securities they have to be licensed, however there are some specifically delineated exceptions. Section one allows the bureau to avoid having to qualify those individuals that sell securities pursuant to federal rule 506. The reason being is it was taking up needed resources of the office and since under rule

506 the sale is to credited investors or sophisticated investors our regulatory jurisdiction in that area was not needed.

Section two discusses suitability. It would allow the bureau to take enforcement action when investors purchase securities from sales representatives that are not suitable investments. According to NAST rules, sales individuals must sell securities after doing an analysis of suitability for investor's background in terms of financial status, investment objectives and risk tolerance. When those criteria are not suitable this would allow the bureau to take action as well as and along with any other agencies that regulate sales agents.

Section three Kevin Moquin will address. It involves fees for auditing exams.

Section four allows the bureau to deem abandoned applications for licensure or registration or exemption, which have not been responded to, via the applicants.

Section five allows for in a 506 offering to give the date of the first sale in the State of New Hampshire so that we can regulate when the issuers are making those transactions in our state.

Section six does away with mandatory filing of financial statements annually for registered offerings. We thought that was not needed and a duplication of efforts. Where most registered offerings are filed in coordination with the SEC and are monitored by the SEC and we would leave in the provision that would allow for financial statements to be distributed by issuers to shareholders. So shareholders would have access to that information.

Section seven and section eight also address the abandonment issue and the bureau's ability to deem abandoned filings that are not responded to.

Section nine and ten allows the bureau to take enforcement action along with and in conjunction with the Attorney General's office. This section was addressed by the Attorney General's office over in the house. The initial version of the bill allowed for the Secretary of State's office to have enforcement authority whereas the bill before did not. The amendment allowed for the Secretary of State's office or the Attorney General's office to take enforcement action so the Attorney General's office would not loose jurisdiction. The reason for this requested change is on cases where we needed to act quickly or on cases where the resources of the Attorney General could not provide assistance, the Secretary of State's office would be allowed to go into court and enforce subpoena's, enforce orders of the bureau and to freeze and appoint receivers for assets.

Section eleven increases the penalty that would be allowed to be assessed against violators of any bureau's orders to $25 per day as opposed to $25 per violation.

Sections Twelve through sixteen address fees and Kevin Moquin will address those sections.

Section seventeen and section eighteen addresses our takeover statute, which is 421-A. The aspects of the takeover statute that we are requesting change would involve additional disclosure to our office and to shareholders or offeror's making takeover bids to target companies in terms of various aspects of the offer and the condition of the offeror and their ability to provide the appropriate financing to make the offer. Specifically we ask that the offeror state specifically they value and number of shares and class of shares requested to be purchased in the takeover. It would also address hearings for the review process of the bureau in takeovers such that any amendments reviewed by the bureau or requested by the bureau be also provided to the target company and such that if there is a hearing requested by the bureau for review of the takeover registration statement, the offeror and the target company would be parties to that proceeding.

Kevin Moquin, Securities Bureau: Section three of the bill deals with examination fees and expenses. Essentially what we're finding and there's two reasons for this provision. First of all we're finding that there is a lack of an incentive at times for an investment buyer who is a broker dealers to provide documentation, records, that sort of thing rapidly. At one point we were able to collect fees and expenses and that was removed so we're looking for $100 per diem for the exam fee. We're finding that most states have some provision for recovery of expenses and costs, we don't. We inadvertently removed the recovery of expenses in 2001 so we can't even recover the normal expenses of an exam. So if we have an exam in a far flung location way in the North Country, that can be expensive and it might involve overnight stays in a hotels and that sort of thing that we can't assess the expenses. So we're looking to recover exam fees and expenses.

Section five basically is an attempt to bring some uniformity and fairness specifically to the issue of the fee for registration of bonds. Currently the fee is assessed per issue. We want to change that to the fee being assessed for each registration statement that is offered. The problem being that we're finding that right now as defined, issue currently means each bond series has to be assessed a fee individually we're really one of the only state, if not the only state that does this and we're finding a lot of complaints about this so we'd like to change the fee so that it's assessed on the registration statement

so that each series within the registration statement does not receive it's own fee. The fee would remain substantial but reasonable to $1,250 fee. You'll note in the fiscal note that our fiscal note states that there will be a $20,000 annual loss in general fund revenue because of this. That's a couple of assumptions. The first assumption that there won't be more registrations because of a more reasonable fee. The other thing that we mistakenly left out was that we are going to be recovering some money through the fee and expenses that we're trying to recover under our examinations. So basically it's a wash. We don't actually have a loss of $20,000 per year due to that oversight in the fiscal note.

Senator Robert B. Flanders, D. 7: Any questions?

Senator John S. Barnes, Jr., D. 17: Yes, thank you Mr. Chairman You started off by talking about the Secretary of State having no authority.

Mr. Spill: Are you addressing that to me?

Senator John S. Barnes, Jr., D. 17: Yes, one of you gentlemen talked about the Secretary of State if I remember correct.

Mr. Spill: The way the law originally read, when it came to enforcement action, enforcing our own orders or subpoenas or asking a receiver to step in and to freeze assets that jurisdiction was in the Attorney General's office. We found that at times that was cumbersome because at times they were short of resources and could not assist or would have a time delay in assisting. We thought it would be a better use of resources for us to have the authority to act if we needed to act. So this was not taking away authority from the Attorney General's office but allowing us along with the Attorney General's office to have jurisdiction.

Senator John S. Barnes, Jr., D. 17: Thank you. I'm on page three line twenty-seven. It's talking about the Secretary of State. I'm wondering if the Secretary of State has the resources to do what you're asking me to do in this piece of legislation.

Mr. Connolly: What line is that sir?

Senator John S. Barnes, Jr., D. 17: A little historical perspective. The security bureau has basically in the last twelve to fifteen resided in the insurance department and in the enforcement area went over to the Attorney General's office and the legislature back in the early 90's centralized securities under the Department of State. Some of the enforcement law resided within the Attorney General's office but really what's happened in

that intervening time, is that the bureau by example by hiring Jeff and people like Kevin, have taken the expertise in administering 421-B, the securities law. So what's happened is sometimes we've had to issue a subpoena and then we have to work with the Attorney General's office. They don't have people over there who are conversant in 421-B or securities law as we might be so we've actually concertedly in the last year hired several individuals we believe allows us to act more efficiently in terms of being able to bring action against registrants or people we believe or companies that should be filed subpoena's against for information.

Senator John S. Barnes, Jr., D. 17: Is that answer a yes or a no?

Mr. Connolly: That's yes. We believe we have the resources to administer this.

Senator John S. Barnes, Jr., D. 17: Thank you.

Senator Robert B. Flanders, D. 7: Any other questions? I'm not sure if this is the place to ask it and I'm not sure if I should but there's no such thing as a stupid question. Is there anything in here that has to do with when a broker is renewing his license? Is there anything in here about that?

Mr. Connolly: No, I don't believe so. Do you think it does Jeff? No.

Senator Robert B. Flanders, D. 7: So in your rewrite here that is not part of it?

Mr. Connolly: No I don't believe any of the language in here directly affects registration brokers.

Senator Robert B. Flanders, D. 7: At some point you may want to look to see when an application to renew licenses is final. The statute now says upon completion of the date of application. When is it complete? When it is received or when the secretary has had all his questions answered? Am I making any sense?

Mr. Connolly: Yes, I think I know what you alluding to.

Mr. Spill: It doesn't address that issue.

Senator Robert B. Flanders, D. 7: Ok. Thank you.

Senator John S. Barnes, Jr., D. 17: I'm on the cover sheet of this piece of legislation, item 3. Inserts authorization to charge $100. What is it now?

Mr. Connolly: Zero. It's zero. It used to be that we charged $250.

Mr. Spill: $275.

Mr. Connolly: What Kevin was alluding to is that we have to go out under statute and audit broker/dealers and what we found is that when you have some incentive for them to deal with you and get you out of there then the audit usually goes pretty fast. Now they don't have to pay any money, we ask for documents and things, there is no incentive in some cases for them to produce documents. We did a scan of all the states and we're one of the only states that doesn't charge for our service if you will. This is actually a third of what we charged just three years ago. So we thought it was a fair number.

Senator John S. Barnes, Jr., D. 17: That certainly makes sense. One other question is on the same page but down to number 7. Increases the fine for violation of a cease and desist order. What are you increasing the fine to?

Mr. Connolly: I'll let Jeff speak to that but basically we have a per fine amount which is $2,500. This language allows us to assess that a little bit higher over a period of time. It's $2,500 a day.

Mr. Spill: It would allow a penalty per day of violation and the reason why we wanted to augment that is..

Senator John S. Barnes, Jr., D. 17: That is the where the $25 per day you were talking about..

Mr. Spill: $2,500 per day.

Senator John S. Barnes, Jr., D. 17: $2,500.

Senator Robert B. Flanders, D. 7: You said $25 per day when you testified.

Mr. Spill: I did say $25 when I testified?

Senator Robert B. Flanders, D. 7: It will not exceed $2,500 per day. So you're saying $2,500 per day. You heard the same as I did, $25. That's not to exceed, Senator Barnes, it doesn't have to be $2,500 per day right? Not to exceed that. You will decide what it is going to be per day?

Senator John S. Barnes, Jr., D. 17: Who sets that?

Mr. Spill: It would have to be in a hearings process whereby we would file a petition for a hearing and address the violation of our order at the hearing and request what fine we felt was appropriate for a violation of that order.

Senator John S. Barnes, Jr., D. 17: Thank you very much.

Senator Robert B. Flanders, D. 7: Any other questions? Thank you for your testimony. Are there any sponsors here that would like to speak?

Representative Spiess: I'm sorry I was late.

Senator Robert B. Flanders, D. 7: I have a reputation of always starting on time and I don't want to break that.

Representative Speiss: I've learned my lesson. I will not be a minute late next time. Thank you. For the record I am Representative Paul Speiss representing Hillsborough 47, the towns of Amherst and Milford. I'm the sponsor of the bill. I was asked to bring the bill by the Secretary of State's office. I'm also a member of the Commerce committee that heard the bill. They have given you testimony on the merits of the bill. I would just reflect that the Commerce committee paid particular interest to sections 9 and 10 because the Attorney General's office raised some questions that would make, that they had concerns about. Loosing powers as it relates to issuing subpoenas. We addressed those concerns in an amendment, which they referred to. I believe all parties are now happy with the amended draft of the bill that you have before you. The bill was reported out of Commerce 13-0 so it was strongly supported. There really was no substantive testimony against the bill, just making sure the language of the bill as it related to the powers of both the Secretary of State and the Attorney General's office. I'd be glad to answer any questions.

Senator Robert B. Flanders, D. 7: Thank you. I don't have the sign up sheet. Is there anyone else wishing to speak on HB 816? If not then we'll close the hearing.

Hearing closed at 1:30

Respectfully submitted

Pamela Manocchi

Pamela Manocchi
May 5, 2003

Speakers

SENATE BANKS

Date April 22, 2003, 2003 Time 1:15 Public Hearing on

Bill # HB 816 making technical corrections to the securities laws.

(Please print) *Please check box(es) at left that apply.*

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
☑	☑	☐	Rep Paul Spiess	Hillsborough 47
☑	☑	☐	MARK CONNOLLY	DEPT. OF STATE
☑	☑	☐	Jeff Spill	Dept. of STATE
☑	☑	☐	Kevin Maguire	Dept. of STATE
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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May 13, 2003

THE COMMITTEE ON Banks

to which was referred House Bill 816

AN ACT making technical corrections to the securities laws.

VOTE: 2-0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Robert B. Flanders
For the Committee

HB816 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: making technical corrections to the securities laws.

Date	Body	Description
1/30/2003	**H**	Introduced and ref to Commerce; HJ 12, p211
2/5/2003	**H**	Hearing Mar 7 10:00 RM302,LOB
3/10/2003	**H**	Subcom Work Session Mar 14 2:30 RM302,LOB
3/19/2003	**H**	Maj Report OTP/AM for Mar 25 (Vote 13-0;CC)
3/19/2003	**H**	Prop Comm Am{0771}; HC26, p765-766
3/25/2003	**H**	Passed with Am; HJ 29-pt 1, p841-842 + pt 2, p965
4/10/2003	**S**	Introduced and Ref. to Banks; SJ 12, Pg.319
4/16/2003	**S**	Hearing; April 22, 2003, Room 103, LOB, 1:15 p.m.; SC19
5/15/2003	**S**	Committee Report; Ought to Pass , [05/22/03]; SC23
5/22/2003	**S**	Ought to Pass, MA, VV; OT3rdg; SJ 17, Pg.410
5/22/2003	**S**	Passed by 3rd Reading Resolution; SJ 17, Pg.479-480
5/29/2003	**S**	Enrolled Bill Amendment{1932}, Adopted; SJ 18, Pg. 522
5/29/2003	**H**	Enrolled Am{1932}, Am Adopted; HJ 47, p1493
6/5/2003	**S**	Enrolled;
6/5/2003	**H**	Enrolled;
6/17/2003	**H**	Signed by the Governor on 6/17/2003 Eff: 8/16/2003 Chap: 0156

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Docket Abbreviations