

**2013 HOUSE APPROPRIATIONS**

**HB 1011**

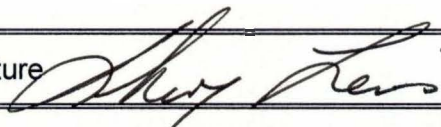
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division  
Medora Room, State Capitol

HB1011  
January 14, 2013  
Recording Job# 17127

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 HB1011. The clerk took the roll call.

**Karen Tyler, Commissioner, ND Securities Commission:** See attachment 1.

4:03

**Chairman Thoreson:** Who do you determine gets the education and literacy programs? Are those targeted towards one segment of the population?

**Karen Tyler:** Our programs are designed to reach constituents of all ages. In the past, we've done a lot of work in the area of school age children; really K-12, but, we also do a lot of work in the area of educating adults. We also do antifraud initiatives as well.

**Chairman Thoreson:** The reason I ask the question is I know we have had legislation in the past dealing with financial literacy with junior high and high school age children. I hear there may be a bill coming back this session dealing something like that. So, I'm trying to get a sense of whether we are providing some of that at this time to that age population.

**Representative Kempenich:** Are you getting any complaints about investor fraud with the oil companies?

**Karen Tyler:** I'm pleased to announce that there isn't a large amount of complaint activity coming out of the western part of the state. That doesn't mean there isn't fraud and misconduct taking place. Oil and gas fraud is, to a large part, formulaic. What you'll have is a promoter residing in one state, soliciting into another state about oil and gas development in a state. The reason for it is they want to make it as difficult as possible for the individual who is being solicited to check if the deal is legitimate or not. We've had a little bit of that activity. We did issue a cease and desist order within the last few months against a California company. It's difficult to do a lot on the front end; because, most of these are private deals. If we do hear from investors that they are being solicited to invest and they're wondering if the program is legitimate, we can be of some assistance.

**Vice Chairman Brandenburg:** Is there a way that we can get protection for people so that they don't stick money into things like this?

**Karen Tyler:** Unfortunately, in this phase, we are preempted by federal law. With many of these private deals, they're utilizing an exemption from registration under federal law; it is Regulation D Rule 506. If they utilize Regulation D Rule 506, we can make no requirements of them; such as, escrowing the funds with a particular financial institution. The only authority that the federal laws preserved for us was fraud authority on the back end. If we can demonstrate that there's been fraud, we can bring an action; but, by that time it's very difficult to secure recovery for the investors.

1742:

**Chairman Thoreson:** Those two people have reached retirement? Have they notified that they are retiring at this time?

**Karen Tyler:** They haven't indicated that they are retiring but they are eligible. One of them has been with us for 47 years.

2109:

**Chairman Thoreson:** Do you have that amendment Joe?

**Joe Morrisette, ND Office of Management and Budget:** I do have that. See attachment 2.

**Chairman Thoreson:** Is there any other explanation other than what the commissioner has given?

**Joe Morrisette:** Just that we are in support of the amendment.

**Chairman Thoreson:** What costs are these pertaining to in technology; is it hardware, software?

**Karen Tyler:** It's our cyclical replacement cycle. We're programmed every 4 years to upgrade our hardware and software if necessary. The primary expense would be associated with hardware upgrades.

**Chairman Thoreson:** Have you put in a request for purchase of these yet? Do you have an idea of what it is you're looking for? Do you have a breakdown of what it is you're looking for?

**Karen Tyler:** We've done some research based on what we think our needs are and have some ideas of pricing. We can put more information together for you. See attachment 3.

23:17

**Representative Glasheim:** How much is in the special fund and where does it come from? Is it like a trust fund?

**Karen Tyler:** The funding source is very unpredictable and inconsistent. It does come from certain civil penalties that we can deposit into the fund under certain circumstances as set forth in statute; donations, grants, reimbursement of tuition that we would pay for the teachers to come out to the University of Mary; it's quite limited to the funding source. We're very conservative with that money; because, we really don't know from one year to another if we will have any revenue coming into that fund.

**Representative Glassheim:** You mainly use that for educational?

**Karen Tyler:** That's correct. That is the funding source for all of our education programs. We don't ask for general fund monies for purposes of funding education.

**Representative Kempenich:** I see you asked for an fte also? Was that for this biennium or was it for last biennium?

**Karen Tyler:** No, we didn't. The \$18 million all goes to the general fund.

30:33

**Chairman Thoreson:** Something like Kickstarter?

**Karen Tyler:** Right. Kickstarter is a website through which it was originally intended for donations; primarily used by artists, musicians, film makers, etc. They could gather donations through this Kickstarter website. In return for their donation, you might get a free copy of the cd or tickets to the movie, etc. Congress included this in the Jobs Act to make a new tool for raising capital; so now, small startup companies can solicit over the internet and they can solicit anyone. They've placed some limits on how much a small company can raise through crowd funding; but, we expect the solicitation over the internet for investment will increase dramatically. We expect that we are going to have more utilization of our enforcement resources in these areas. These are very difficult cases to deal with in terms of getting money back to investors.

**Vice Chairman Brandenburg:** When they invest into a risk capital they can only deduct \$3,000.00 a year on their taxes. I think that's one way that we as a state could fight this thing off. If the people could deduct their taxes, we could fight this off and make the realization that you can't deduct it. Not only do you pay tax on it, you also can't write the loss off.

**Karen Tyler:** It is a big challenge and I think we have to do a better job with education.

**Representative Kempenich:** Is there anything within the state boundaries that you could require if they're over a certain dollar amount for small investors outside of the federal law? Could we catch this before it happens?

**Karen Tyler:** Unfortunately, with these private deals and the crowd funding, we can only clean up the mess on the back end. With what's going on in the western part of the state, there are two issues; there are the development type deals and also the real estate development that's going on. That's one aspect; the other aspect is all of the wealth creation. We can do something in that area if our residents are subjected to misconduct on

the part of financial professionals. Financial professionals, who make unsuitable, inappropriate recommendations for individuals who have new found wealth, may not be sophisticated investors. We do have things in place to deal with that.

**Representative Glassheim:** Without regulating could the state of North Dakota require any form of disclosure from companies soliciting?

**Karen Tyler:** There is some disclosure that is required in these private deals. For example, under Regulation D Rule 506, they do have to file a form with the Securities and Exchange Commission. We do have the authority to require that they file the same thing with us. They have to put an offering document together. What they chose to put in that offering document in terms of disclosure we don't have authority over. However, we can look at that disclosure document and determine if we believe there are material omissions from the document. If there is potential for fraud based on what we're seeing in the document, then we can step in. We can't tell them what they have to disclose; we have limited authority there. With crowd funding there will also be disclosure. We can also take a look at the people involved and we can check their background.

**Representative Glassheim:** Do you need any additional legislation or authority from North Dakota to give you whatever tools you can have? Do you already have what you need?

**Karen Tyler:** I think we have the enforcement authority to do the job. The problem is what has happened on the federal level in preempting us. We have no authority to try to amend and FCC rule, for example. We have the opportunity to comment on it; and then they have the opportunity to ignore our comments.

43:36

**Chairman Thoreson:** Do you have a list? Has that increased quite a bit?

**Karen Tyler:** Since last session it's increased by 4,000. We have one broker for every ten people in North Dakota. We also have 2,100 investment advisor representatives. We are seeing a decrease in brokerage firms. This is a result of firms failing.

46:12

**Representative Kempenich:** I see you're keeping Test the Waters offerings. It looks like you had 3 last biennium and you're expecting 6 this next biennium. Is that just an estimate?

**Karen Tyler:** That's just an estimate. Test the Waters is an exemption that allows companies to go out and test the waters to see if there will be an interest in their securities offerings; should they choose to do one. It helps keep costs down for them and they can gauge whether or not they would be successful if they tried to raise capital.

**Vice Chairman Brandenburg:** I see that you have the six individuals that have been prosecuted criminally. I'm wondering about the ones in the middle that we can't catch. Where's that at?

**Karen Tyler:** Some of our cases are pretty easy to resolve. You have somebody who did the wrong thing for an investor; the firm's going to try to make it right. So we can assess a

penalty, get restitution for the investor and solve the problem. We have situations where it is all out fraud; the individual isn't affiliated with any company. About the only thing we can do there is a cease and desist order, possibly issue an order of penalty, order restitution. But, the real teeth would be to make a criminal referral.

**Chairman Thoreson:** Closed the hearing.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division  
Medora Room, State Capitol

HB1011  
January 21, 2013  
Recorder Job# 17422

Conference Committee

*Jocelyn Gallagher*

## 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:

attached testimony 1, 2

**Chairman Thoreson:** Opened the hearing on HB 1011.

2:14

**Representative Kempenich:** The last person who left, do you know why?

**Karen Tyler, Commissioner, ND Securities Department:** Our last staff member to leave was in 2010, and she had reached retirement age and planned on retiring. I appreciate low turnover because of the level of expertise.

**Vice Chairman Brandenburg:** Looking at your chart, your staff average is 18 years, but the bar jumps down 2012 through 2014. Is that the person who left so that lowered years of average?

**Karen Tyler:** My understanding this is a comparison between securities dept. versus all state employees. (See attachment 2)

**Representative Kempenich:** How far out have you gone to maintain this?

6:53

**Ken Purdy, Human Resources Management Services, ND Office of Management and Budget:** Explained attachments 1 and 2; and how they work.

08:23

**Representative Kempenich:** The problem is that it's hard to take it back, we keep people and we want to reward them but that is the fine line where they work themselves out of a job.

09:20-11:20

**Ken Purdy:** Continued with his explanation of attachment 1 and 2 and how they work pertaining to the employees of the securities department.

12:23

**Representative Kempenich:** Do you have any initiatives for the next biennium on the investigator education program?

**Karen Tyler:** We're just decreasing the requested appropriation from that special fund because we're changing some of our programming. We used to do this annual event at the University of Mary called Invest North Dakota; which was a teacher training event. It was very well received and we'd bring in about 100 teachers every summer. We felt it was a good time to step back on that and shift our focus more toward anti-fraud messaging.

**Representative Kempenich:** There are other agencies that are doing some initiatives too, have you thought about working together?

**Karen Tyler:** We have actually done some collaborating in the past and we invited others to present their programs at our event at U of Mary. I can't recall any coordinated programs with for example an anti-fraud message, we might have teamed up with banking and insurance. I think it is a good thing to do and we would be open to doing this.

**Representative Kempenich:** If agencies combined there could probably be a fairly sizable sum of money to do some events and make an impact.

**Karen Tyler:** We have heard from the private sector a little bit on that. The problem is usually the delivery mechanism because it takes human resources. Given the industry we regulate, the private sector would like to be involved in doing some of the educating themselves, as that is the best way to land a new client. We have to be sensitive to that and careful partnering with the private sector, because the next day we might be taking an enforcement action. We are happy to do this and look for partnering opportunities as well.

**Vice Chairman Brandenburg:** How can we be so regulated in the banking industry and so un-regulated in the area where people can invest and lose money?

**Karen Tyler:** When you're talking about capital formation, you're not just talking about the securities industry. It's balancing the interests of business with the interest of investors. I think one of the biggest problem areas is Regulation D Rule 506. We are pre-empted. The Securities and Exchange Commission is in the process of writing rules on Regulation D Rule 506 based on what came out of the Jobs Act; and that provision of being allowed to generally solicit.

**Chairman Thoreson:** Would you have some supporting information you could give us we were to entertain a resolution?

**Karen Tyler:** Absolutely. I can provide you with a comment letter that we submitted to the Securities and Exchange Commission that dealt with the investor protection issues and what we recommended.



**Chairman Thoreson:** You said they pulled the rule back is that correct?

**Karen Tyler:** Yes.

**Chairman Thoreson:** Are they doing a rewrite of it or are they just waiting for additional comment?

**Karen Tyler:** Basically what they did they parroted what was in the Jobs Act which is not what congress had intended. They are sitting with four commissioners right; nothing is going to go waiting for the appointment of the chair.

**Chairman Thoreson:** Has there been somebody nominated for the chair position?

**Karen Tyler:** Not at this time.

**Chairman Thoreson:** If you would like to provide some information, we can look at it and see. If this is something that's a hindrance to us, we should probably let them know our feelings.

**Karen Tyler:** Sure.

**Chairman Thoreson:** Closed the hearing on HB1011.

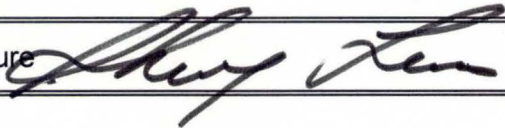
# 2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division  
Medora Room, State Capitol

HB1011  
February 14, 2013  
Recording Job# 18912

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 HB1011.

**Representative Kempenich:** There was an amendment that was prepared by OMB on January 14, 2013.

**Karen Tyler:** Explained amendment from January 14, 2013.

**Chairman Thoreson:** It's not an addition or subtraction it's just moving it to the correct place. Is that you're understanding also?

**Joe Morrissette, Fiscal Analyst, ND Office of Management and Budget:** That's correct. The funding source should have been the general fund instead of their special fund. We agreed with that adjustment.

**Representative Kempenich:** Made a motion to move the amendment.

**Representative Sanford:** Seconded the motion.

**Representative Kempenich:** The only other thing I have is regulation 506D. I don't know what the securities commissioner wants to do with that.

**Chairman Thoreson:** Can we put a paragraph of some type into the budget?

**Brady Larson, Fiscal Analyst, ND Legislative Council:** I'm not familiar with any situations where there has been a section placed in a bill that the legislature urges the federal government to take action on an issue. I could research if that's been done before and if it's possible. Normally, when the federal government is urged to do something it's through a resolution.

**Vice Chairman Brandenburg:** We've talked about putting a resolution to put on. Should we try to do something in your bill or leave it alone?

**Karen Tyler:** I'd rather not set any trends with our budget. It may be better to write a letter to the FCC in your capacity as representatives of your districts.

**Chairman Thoreson:** Would you be interested in drafting something to forward to us?

**Karen Tyler:** Sure.

**Representative Glassheim:** You could get a delayed bill resolution.

**Chairman Thoreson:** It's a possibility.

**Representative Kempenich:** North Dakota is in a position of raising a lot of capital. That's why I thought it would probably be pertinent to pursue this a little more.

A voice vote was made on the proposed amendment.

The motion carried.

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

**Representative Sanford:** Seconded the motion.

A roll call vote was made. 7 Yeas 0 Nays 0 Absent.

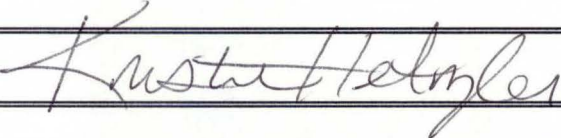
**Chairman Thoreson:** Closed the discussion.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee  
Roughrider Room, State Capitol

HB 1011  
2/20/13  
Job 19229

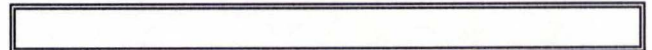
Conference Committee



## 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 Delzer:** We'll do 1011

**Rep. Kempenich:** Moved amendment .01001, seconded by Rep. Brandenburg.

**Rep. Kempenich:** Went through the amendment.

**Chairman Delzer:** You said it was basically self-funded?

**Rep. Kempenich:** It's from fees. They turn all their money into general fund.

**Chairman Delzer:** Where does the other fund come from?

**Rep. Kempenich:** Licenses and fees?

**Chairman Delzer:** Asks Sheila Sandness, LC, about green sheet.

**Sheila:** 3:45 That would have been part of the executive recommendation.

**Rep. Skarphol:** With line 4, is there an anticipated retire there with that 38,000?

**Rep. Kempenich:** I think that's what was indicated there. When we went through their employee list, they have a 10 year average.

**Chairman Delzer:** Does this coincide with what we're putting forward, or is this more than the 1%?

**Sandness:** The amendment to this bill includes a transfer of 38,927 so I'm not sure how that number was arrived at. I will check with the individual that drafted it.

**Rep. Kempenich:** Provides \$38,000 one-time funding 5:20.

**Rep. Skarphol:** 6:20 What is the investor education?

**Rep. Kempenich:** That was a grant that was last year from some private banks it was used and they didn't get it back again. They didn't continue it. It was also indicated the treasurer's office was also doing this too.

**Chairman Delzer:** Is there any money in the investor restitution fund or does that automatically flow through?

**Rep. Kempenich:** It is a continuing.

**Chairman Delzer:** They are both continuing and you are using that for computer replacement.

**Rep. Kempenich:** It's general fund

**Chairman Delzer:** The green sheet lists it as other funds, but the amendment shifts it to general?

**Rep. Skarphol:** Is there any money in that fund?

**Rep. Kempenich:** Yes

**Chairman Delzer:** Why are you shifting it then? It looks like that is what is supposed to be used for?

**Chairman Delzer:** This is number 1 on the green sheet, number 4 on amendment statement of purpose

**Rep. Kempenich:** No, that's using up what's left of that grant fund.

**Chairman Delzer:** Obviously the executive budget thought it could come out of that fund and you guys are shifting it to general fund.

**Rep. Kempenich:** I didn't think anything off the green sheet was changed.

**Rep. Thoreson:** I don't show we moved that funding source

**Chairman Delzer:** That amendment might not be right then. 9:35 Then I would say you should adjust your motion

**Rep. Kempenich** and Rep. Brandenburg adjusted the motion regarding the fund.

**Chairman Delzer:** Green sheet on number 1, it is listed as other funds but the amendment isn't the same

**Lori Laschkewitsch**, OMB: 11:50 It was coded with the wrong funding source so it was intended to be general funding in their budget.

**Chairman Delzer** : What is the amount in that investor education technology fund?

**Sandness, LC**: In bars the ending balance is 422,151 dollars. The reason the numbers match is

**Sheila**: I got a hold of Brady and the reason that the numbers match in the executive recommendation was because the calculation that was done was 17,000.

**Rep Kempenich**: Moves a DO Pass as Amended.

**Rep Thoreson**: Second.

22-0-0

**Carried by**: Rep Kempenich

*Handwritten notes:*  
 10/21/13  
 10/21/13  
 10/21/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1011

Page 1, replace lines 11 through 15 with:

"Salaries and wages	\$1,519,978	\$120,704	\$1,640,682
Operating expenses	706,441	(121,349)	585,092
Accrued leave payments	<u>0</u>	<u>38,927</u>	<u>38,927</u>
Total all funds	\$2,226,419	\$38,282	\$2,264,701
Less estimated income	<u>317,199</u>	<u>(121,349)</u>	<u>195,850</u>
Total general fund	\$1,909,220	\$159,631	\$2,068,851"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

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

	Executive Budget	House Changes	House Version
Salaries and wages	\$1,735,950	(\$95,268)	\$1,640,682
Operating expenses	585,092		585,092
Accrued leave payments		38,927	38,927
Total all funds	\$2,321,042	(\$56,341)	\$2,264,701
Less estimated income	<u>195,850</u>	<u>0</u>	<u>195,850</u>
General fund	\$2,125,192	(\$56,341)	\$2,068,851
FTE	9.00	0.00	9.00

**Department No. 414 - Securities Department - Detail of House Changes**

	Corrects Executive Compensation Package <sup>1</sup>	Adjusts State Employee Compensation and Benefits Package <sup>2</sup>	Provides Separate Line Item for Accrued Leave Payments <sup>3</sup>	Total House Changes
Salaries and wages	\$5,746	(\$62,087)	(\$38,927)	(\$95,268)
Operating expenses				
Accrued leave payments			38,927	38,927
Total all funds	\$5,746	(\$62,087)	\$0	(\$56,341)
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
General fund	\$5,746	(\$62,087)	\$0	(\$56,341)
FTE	0.00	0.00	0.00	0.00

<sup>1</sup>Funding is added due to a calculation error in the executive compensation package.

<sup>2</sup>This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent per year.
- Reduces the market component from 2 to 4 percent per year for employees below the midpoint of their salary range to up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

<sup>3</sup>Funding included in the executive budget for accrued leave payments for the Securities Department is reallocated to an accrued leave payments line item.





**2013 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB1011**

House Appropriations - Government Operations Division Committee

Check here for Conference Committee

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

Action Taken Do Pass As Amended

Motion Made By Representative Kempenich Seconded By Representative Sanford

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Chairman Thoreson	x		Representative Glassheim	x	
Vice Chairman Brandenburg	x		Representative Guggisberg	x	
Representative Kempenich	x				
Representative Hawken	x				
Representative Sanford	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Representative Kempenich

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

Date: 2/20/13  
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1011**

House Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 01001

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

Motion Made By Rep. Kempenich Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer			Rep. Streyle		
Vice Chairman Kempenich			Rep. Thoreson		
Rep. Bellew			Rep. Wieland		
Rep. Brandenburg					
Rep. Dosch					
Rep. Grande			Rep. Boe		
Rep. Hawken			Rep. Glassheim		
Rep. Kreidt			Rep. Guggisberg		
Rep. Martinson			Rep. Holman		
Rep. Monson			Rep. Williams		
Rep. Nelson					
Rep. Pollert					
Rep. Sanford					
Rep. Skarphol					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*01001 +  
 shift funds to the way green sheet  
 lists as other funds  
 voice vote carries*

Date: 2/20/13  
 Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1011**

House 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 Rep. Kempenich Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle	X	
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch	X				
Rep. Grande	X		Rep. Boe	X	
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt	X		Rep. Guggisberg	X	
Rep. Martinson	X		Rep. Holman	X	
Rep. Monson	X		Rep. Williams	X	
Rep. Nelson	X				
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarphol	X				

Total Yes 22 No 0

Absent \_\_\_\_\_

Floor Assignment Rep. Kempenich

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

**REPORT OF STANDING COMMITTEE**

**HB 1011: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (22 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1011 was placed on the Sixth order on the calendar.

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Less estimated income	0	0	0	0
General fund	\$5,746	(\$62,087)	\$0	(\$56,341)
FTE	0.00	0.00	0.00	0.00

<sup>1</sup>Funding is added due to a calculation error in the executive compensation package.

<sup>2</sup>This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent per year.
- Reduces the market component from 2 to 4 percent per year for employees below the midpoint of their salary range to up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

<sup>3</sup>Funding included in the executive budget for accrued leave payments for the Securities Department is reallocated to an accrued leave payments line item.



**2013 SENATE APPROPRIATIONS**

**HB 1011**

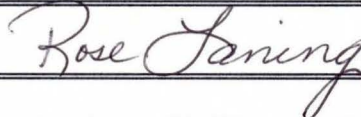
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

HB 1011  
March 6, 2013  
Job # 19499

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:

Testimony attached # 1

Legislative Council - Brady Larson  
OMB - Laney Herauf

**Chairman Holmberg** opened the hearing on HB 1011. All committee members were present.

### **Karen Tyler, State Securities Commissioner**

Also introduced Mike Daley, Attorney for the Commission  
Testimony attached # 1

(7:00) **Chairman Holmberg:** (Speaking about an amendment that was prepared to address an error in the Department's budget request - expenses for replacement technology.) Was that amendment prepared that by you all or by Legislative Council?

**Karen Tyler:** OMB originally prepared it.

(12:38) **Senator Warner:** Is there a maximum dollar amount that they can solicit?

**Karen Tyler:** There is some constraints on what can be invested in a year, but, the next year they can invest again. So they did put limits on it, but they aren't terribly significant we think. Congress maybe thought that small investors were missing out on these deals. There is a risk of losing your investment to fraud.

(16:11) **Senator Wanzek:** At what point do you determine something is fraud versus just a legitimate bad deal?

**Karen Tyler:** There is a notice filing with the SCC and the State. It helps us identify who is involved in the deal and they actually need to be registered to. So if we're got unregistered activity and have not made a notice filing with the SCC, the people are not registered to do business here, that's a pretty big red flag. If we have names of individuals, we can check

data records. There is a very comprehensive data base of securities professionals and regulatory actions that we can check out. Very often especially in the oil and gas phase, it's a repeat offender. We can usually determine rather quickly.

**Senator Wanzek:** I was kind of struck by the North Dakota Commodities Act. Would that be like commodity and brokers that you regulate?

**Karen Tyler** replied our authority is very narrow there because the states where fairly widely preempted in the commodities space when the Commodities Act was revised in the early 1980's. Our authority there is very narrow, but it preserves our ability to deal with fraud in the commodities area. But we're not registering commodities, brokers, and other entities in that space as we do with securities firms and individuals.

19:28 **Senator Warner** You alluded to some changes in your investor education program. Could you elaborate just a little bit?

**Karen Tyler:** In the process of shifting our focus. Historically we've done a lot with teachers and schools and helping teachers incorporate financial education into their curriculums. I think it was in 2009 the Legislature passed legislation that would require financial education to be taught at the high school level. We felt that given that was being put into place, we could maybe better use our assets and shift our focus on more anti-fraud messages; reaching out to senior population, reaching out to working adults about retirement issues. We had run a program out at the University of Mary for 15 years. It was called Invest North Dakota, and it was specifically for teachers K-12, and they came out and join us for a week, and over the course of the week, we train them on various curriculum resources that they could take back and incorporate into the classroom. That was a pretty expensive program for us; it ran somewhere between, \$50,000-\$70,000 a year. We have put that on hold for now, shifting our focus a little bit. We may reintroduce it in the future but that has been a significant change for us.

**Senator Warner:** You regulate pre-paid funeral. About once or twice a month we're getting solicitations to attend seminars on estate planning. Do you guys monitor those or do you regulate those programs in any way? Do you distinguish between ones that are strictly informational and the ones who are actually promoting a product?

**Karen Tyler:** In regard to the pre-need funeral contract regulation, about 25 years ago the Security Department followed the Banking Department in their testimony on something. The banking department didn't want pre-need funeral contracts any more than the securities department was asked to take it temporarily. But in regard to your question about estate planning, we do have concerns about seminar activity. Some seminar activity of course is legitimate. A lot of seminar activity is really designed to push a particular product. Estate planning is really built as being informational; you've got attorneys on the agenda, that is probably something that we wouldn't be as concerned about. When you have an insurance agent on the agenda for estate planning, I don't mean to disparage the insurance agents in the industry overall, but very often there is pitch for a particular insurance product to solve all of your estate planning needs. So, they should be approached with great caution. Never in a seminar setting should you end up with a one-size fits all recommendation. These recommendations in regards to estate planning should be based



on an individual particular needs and condition. These seminars are really designed to pitch product should be avoided. Anytime you get an invitation like that, you can just call our department and let us know who is on the agenda and we can check some records for you.

**Senator Wanzek** Where does the \$17M in revenue go? Does it go to the general fund?

**Karen Tyler:** It does go into the general fund. We do have authority to in certain circumstances with certain revenues deposit them into our special fund which is specifically for industrial education. But, by and large the vast majority of our revenues do go directly to the general fund.

**V.Chairman Bowman** Your amendment in this bill replaces the \$25,000 from other funds to general funds? (24:20)

**Karen Tyler:** That's correct. **V. Chairman Bowman** and it adds the \$170,000 to other funds or special funds. Karen Tyler replied the \$170,000 is already there. So the amendment just adjusts the other funds category downward by that \$25,850 and puts that back to the general fund appropriation.

**Karen Tyler** added, we do have the amendments prepared. The amendment that I have here utilizes the numbers that came out of the House in the Engrossed bill. So we have the amendment.

**Chairman Holmberg** What bill do you have Brady prepare the amendment based upon what we're going to do then, so when we decide what we're going to do, then you can prepare that amendment for our consideration.

**Chairman Holmberg** closed the hearing on HB 1011. I don't know if we have to have a formal meeting. We can bring this up at some time.

**Chairman Holmberg** said V.Chairman Bowman carry the bill. Senator Wanzek and Warner would be on a conference committee if we have one down the road. What typically happens though is if the only difference between the Senate and the House is the mechanism for employee compensation, and that is resolved in some manner or another, then the conference committees become pretty simple. But they still are a part of what we do. (26:15)

# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

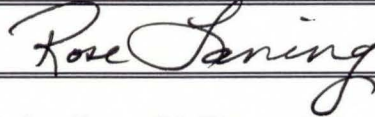
HB 1011 subcommittee

March 20, 2013

Job # 20222

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:

Testimony attached # 1

Legislative Council - Brady Larson

OMB - Sheila Peterson

**Senator Bowman** opened the hearing on HB 1011. Senator Wanzek and Senator Warner were also present.

**Senator Bowman** handed out amendment 13.8140.02001 which was suggested for the Securities Commission bill. Asked Karen Tyler to explain the amendment.

### **Karen Tyler, State Securities Commissioner**

The amendments that we are requesting doesn't change the overall amount of the budget, it just shifts the funding source. For some reason, our technology expenses were indicated they would be paid out of special funds. This has never happened before in the past. Unfortunately our analyst at the time is no longer with the department so we don't really have a record of how that happened. The amendment moves the technology expense of \$25,850 from our special funds as the funding source back to the general fund as the funding source.

As far as what type of technology expense, this is the cyclical technology replacement that the departments go through. We're on a four year cycle.

**Senator Warner** asked OMB to explain the regularity of the replacement cycle. Is it consistent with all agencies or do they make adjustments for agencies that have greater demands? He assumed they were talking about computer replacements.

**Sheila Peterson:** Yes, everybody is right around a 4 year replacement for their desktops, laptops.

**Senator Warner:** Which operating system do we use and do we rotate all of those at the same time? I'm assuming you do half each biennium? Is there consistency as to which version of Windows we're using?

**Sheila Peterson:** Small agencies, like securities, yes, we tend to do them all at one time. So you'll see it one biennium and then you won't see expenditures for computers the next. Larger agencies like OMB, we do a fourth of them each year over a 4 year period so each biennium we're doing about a half and half. It's at that point when someone is up for a new computer, because of the four years that we get the newest operating system, the newest Windows. At least at OMB, we don't do it until a new computer is on our agenda for an individual. Some of us Windows 7, some of us don't depending where we are in that four year cycle.

**Senator Bowman** (question for Brady Larson): On the salary changes that will come back when we make that decision, will that also include money that's in this budget for the sick leave because of retirement?

**Brady Larson:** If you look at the amendments, there are adjustments in there already for the compensation package. If you look at footnote #1, this is adding back the money that the House removed for the compensation package. Item #2 is related to that accrued leave payments. It eliminates that line item and restores that funding back to the salaries and wages line item. This is consistent with all the other bills coming out of the Senate. The third footnote is the change in funding source for the information technology projects that have just been discussed. One other technical item with this amendment - there was a one-time funding section added because the accrued leave payments and the IT appraiser are considered one-time funding and not on-going items. We did add a section that declared those items to be one-time funding. That would be the new section two of the bill that you see on the front page of the amendments.

**Senator Wanzek:** The \$38,927 is now included in the salaries and wages line, but it's one-time?

**Brady Larson:** That is correct. That would be consistent with the executive recommendation. The executive recommendation was one-time funding in the salaries and wages line item.

**Senator Wanzek:** All we're doing is addressing the shift in funding to the general fund for the IT upgrades and re-instating the governor's compensation package.

**Senator Warner moved to amend HB 1011 with amendment 13.8140.02001.  
Senator Wanzek seconded the motion.**

**Voice vote carried unanimously.**

**Senator Bowman** said they'll present this to the committee .

**Senator Bowman** closed the hearing on HB 1011.

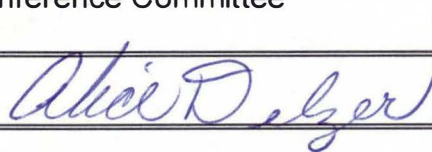
# 2013 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

HB 1011  
03-21-2013  
Job # 20271

Conference Committee

Committee Clerk Signature



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

A BILL for the Securities Commission (Do Pass as Amended )

### Minutes:

You may make reference to "attached testimony."

**Chairman Holmberg** called the committee to order on Thursday, March 21, 2013 at 8:30 am. The calling of the roll indicates everyone is here. Sheila M. Sandness from Legislative Council was present. Chairman Holmberg talked to the committee about the schedule for next week and referred to the overhead screen on which our subcommittee hearings are printed. (0.15-6.32)

### The hearing was opened on HB 1011.

**Vice Chairman Bowman** explained the amendment # 13.8140.02001, Attachment #1. The amendments only do one thing a lot of it has to do with salaries. There was \$25,850 that was removed from special funds that should have stayed in the general fund when they did the budget and this is what that amendment does is correct that. There is no addition or reduction of the base salary out of the base budget.

**Vice Chairman Bowman** moved the amendment #13.8140.02001. 2<sup>nd</sup> by Senator Robinson.

**Chairman Holmberg:** it's the standard. I had a question yesterday and called Allen H. Knudson from Legislative Council and he did say that every one of the budget bills the Council will automatically put in the executive recommendation on salary and wages, you don't have to ask them to do it on the budgets. They will do that. All in favor of the amendment say aye. It carried.

**Vice Chairman Bowman** Moved Do Pass as Amended. 2<sup>nd</sup> by Senator Robinson.

**A Roll Call vote was taken. Yea: 13; Nay: 0; Absent: 0.**

**Vice Chairman Bowman will carry the bill**

The hearing was closed on HB 1011.

*JB*  
 3/21/13  
 1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1011

Page 1, replace lines 11 through 16 with:

"Salaries and wages	\$1,519,978	\$221,718	\$1,741,696
Operating expenses	<u>706,441</u>	<u>(121,349)</u>	<u>585,092</u>
Total all funds	\$2,226,419	\$100,369	\$2,326,788
Less estimated income	<u>317,199</u>	<u>(147,199)</u>	<u>170,000</u>
Total general fund	\$1,909,220	\$247,568	\$2,156,788"

Page 1, after line 17, insert:

**"SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FOURTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-second legislative assembly for the 2011-13 biennium and the 2013-15 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2011-13</u>	<u>2013-15</u>
Information technology equipment upgrades	\$0	\$25,850
Retirement leave payouts	<u>0</u>	<u>38,927</u>
Total general fund	\$0	\$64,777

The 2013-15 one-time funding amounts are not a part of the entity's base budget for the 2015-17 biennium. The securities commissioner shall report to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2013, and ending June 30, 2015."

Re-number accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1011 - Securities Department - Senate Action**

	<u>Executive Budget</u>	<u>House Version</u>	<u>Senate Changes</u>	<u>Senate Version</u>
Salaries and wages	\$1,735,950	\$1,640,682	\$101,014	\$1,741,696
Operating expenses	585,092	585,092		585,092
Accrued leave payments		38,927	(38,927)	
Total all funds	\$2,321,042	\$2,264,701	\$62,087	\$2,326,788
Less estimated income	<u>195,850</u>	<u>195,850</u>	<u>(25,850)</u>	<u>170,000</u>
General fund	\$2,125,192	\$2,068,851	\$87,937	\$2,156,788
FTE	9.00	9.00	0.00	9.00

**Department No. 414 - Securities Department - Detail of Senate Changes**

	<u>Restores Executive Compensation Package<sup>1</sup></u>	<u>Removes Separate Line Item for Accrued Leave Payments<sup>2</sup></u>	<u>Adjusts Funding Source for Information Technology Upgrades<sup>3</sup></u>	<u>Total Senate Changes</u>
Salaries and wages	\$62,087	\$38,927		\$101,014
Operating expenses				
Accrued leave payments		(38,927)		(38,927)

2 of 2

Total all funds	\$62,087	\$0	\$0	\$62,087
Less estimated income	0	0	(25,850)	(25,850)
General fund	\$62,087	\$0	\$25,850	\$87,937
FTE	0.00	0.00	0.00	0.00

<sup>1</sup>Funding reductions made by the House to the state employee compensation and benefits package are restored to the Governor's recommended level.

<sup>2</sup>The accrued leave payments line item added by the House is removed and the associated funding returned to line items with salaries and wages funding.

<sup>3</sup>The funding source for \$25,850 of information technology upgrades for the Securities Department is changed from the investor education and technology fund to the general fund.

This amendment also adds a section to provide that funding from the general fund for information technology upgrades and retirement leave payouts is considered one-time funding.

Date: 3-21-13

Roll Call Vote # 1

**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. 1011

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8140.02001

Action Taken  Adopt Amendment  Do Pass  
 Do Pass as Amended  Do Not Pass

Motion Made By Bowman Seconded By Robinson

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg			Senator Tim Mathern		
Co-Vice Chairman Bill Bowman			Senator David O'Connell		
Co-Vice Chair Tony Grindberg			Senator Larry Robinson		
Senator Ralph Kilzer			Senator John Warner		
Senator Karen Krebsbach					
Senator Robert Erbele					
Senator Terry Wanzek					
Senator Ron Carlisle					
Senator Gary Lee					

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

Absent \_\_\_\_\_

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

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

*Voice Vote  
passed*

Date: 3-21-13

Roll Call Vote # 2

**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. 1011

Senate Appropriations Committee

Check here for Conference Committee

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

Action Taken  Adopt Amendment  Do Pass  
 Do Pass as Amended  Do Not Pass

Motion Made By Bowman Seconded By Robinson

Senators	Yes	No	Senator	Yes	No
Chairman Ray Holmberg	✓		Senator Tim Mathern	✓	
Co-Vice Chairman Bill Bowman	✓		Senator David O'Connell	✓	
Co-Vice Chair Tony Grindberg	✓		Senator Larry Robinson	✓	
Senator Ralph Kilzer	✓		Senator John Warner	✓	
Senator Karen Krebsbach	✓				
Senator Robert Erbele	✓				
Senator Terry Wanzek	✓				
Senator Ron Carlisle	✓				
Senator Gary Lee	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Bowman

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



**REPORT OF STANDING COMMITTEE**

**HB 1011, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1011 was placed on the Sixth order on the calendar.

Page 1, replace lines 11 through 16 with:

"Salaries and wages	\$1,519,978	\$221,718	\$1,741,696
Operating expenses	<u>706,441</u>	<u>(121,349)</u>	<u>585,092</u>
Total all funds	\$2,226,419	\$100,369	\$2,326,788
Less estimated income	<u>317,199</u>	<u>(147,199)</u>	<u>170,000</u>
Total general fund	\$1,909,220	\$247,568	\$2,156,788"

Page 1, after line 17, insert:

**"SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FOURTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-second legislative assembly for the 2011-13 biennium and the 2013-15 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2011-13</u>	<u>2013-15</u>
Information technology equipment upgrades	\$0	\$25,850
Retirement leave payouts	<u>0</u>	<u>38,927</u>
Total general fund	\$0	\$64,777

The 2013-15 one-time funding amounts are not a part of the entity's base budget for the 2015-17 biennium. The securities commissioner shall report to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2013, and ending June 30, 2015."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1011 - Securities Department - Senate Action**

	<b>Executive Budget</b>	<b>House Version</b>	<b>Senate Changes</b>	<b>Senate Version</b>
Salaries and wages	\$1,735,950	\$1,640,682	\$101,014	\$1,741,696
Operating expenses	585,092	585,092		585,092
Accrued leave payments		<u>38,927</u>	<u>(38,927)</u>	
Total all funds	\$2,321,042	\$2,264,701	\$62,087	\$2,326,788
Less estimated income	<u>195,850</u>	<u>195,850</u>	<u>(25,850)</u>	<u>170,000</u>
General fund	\$2,125,192	\$2,068,851	\$87,937	\$2,156,788
FTE	9.00	9.00	0.00	9.00

**Department No. 414 - Securities Department - Detail of Senate Changes**

	<b>Restores Executive Compensation Package<sup>1</sup></b>	<b>Removes Separate Line Item for Accrued Leave Payments<sup>2</sup></b>	<b>Adjusts Funding Source for Information Technology Upgrades<sup>3</sup></b>	<b>Total Senate Changes</b>
Salaries and wages	\$62,087	\$38,927		\$101,014
Operating expenses				
Accrued leave payments		<u>(38,927)</u>		<u>(38,927)</u>
Total all funds	\$62,087	\$0	\$0	\$62,087
Less estimated income	<u>0</u>	<u>0</u>	<u>(25,850)</u>	<u>(25,850)</u>
General fund	\$62,087	\$0	\$25,850	\$87,937
	0.00	0.00	0.00	0.00

FTE

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<sup>1</sup>Funding reductions made by the House to the state employee compensation and benefits package are restored to the Governor's recommended level.

<sup>2</sup>The accrued leave payments line item added by the House is removed and the associated funding returned to line items with salaries and wages funding.

<sup>3</sup>The funding source for \$25,850 of information technology upgrades for the Securities Department is changed from the investor education and technology fund to the general fund.

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This amendment also adds a section to provide that funding from the general fund for information technology upgrades and retirement leave payouts is considered one-time funding.

**2013 CONFERENCE COMMITTEE**

**HB 1011**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Government Operations Division  
Medora Room, State Capitol

HB1011  
April 23, 2013  
Recording Job# 21461

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 Kempenich:** Opened the conference committee on HB1011. All members were present.

**Senator Bowman:** There are only two amendments we have to decide if we're going to get the technology money from the general fund or from another fund; and then the salary package.

**Chairman Kempenich:** Is section 2 new or is that one time?

**Brady Larson, Fiscal Analyst, ND Legislative Council:** The one time funding section relates to the IT upgrade. When the Senate had the bill they changed the funding source from special funds to general funds. We did place the one time funding section in the bill to indicate that that is a one-time general fund funding source. Also in the Senate version there was no separate accrued leave payments line item and there is some funding in the securities department budget for retirement leave payouts; and so when there wasn't a separate accrued leave payments line, we also identified that special funding as being one time funding.

**Senator Bowman:** Made a motion to recede from the Senate amendments and further amend including the pay package and the technology part.

**Senator Warner:** Seconded the motion.

Roll call vote 6 Yeas 0 Nays 0 Absent.

**Chairman Kempenich:** Closed the conference committee.

VR  
 4/25/13  
 1002

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1011

That the Senate recede from its amendments as printed on pages 1057 and 1058 of the House Journal and pages 827-829 of the Senate Journal and that Engrossed House Bill No. 1011 be amended as follows:

Page 1, replace lines 11 through 16 with:

"Salaries and wages	\$1,519,978	\$153,785	\$1,673,763
Operating expenses	706,441	(121,349)	585,092
Accrued leave payments	0	38,927	38,927
Total all funds	\$2,226,419	\$71,363	\$2,297,782
Less estimated income	317,199	(147,199)	170,000
Total general fund	\$1,909,220	\$218,562	\$2,127,782"

Page 1, after line 17, insert:

**"SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FOURTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-second legislative assembly for the 2011-13 biennium and the 2013-15 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2011-13</u>	<u>2013-15</u>
Information technology equipment upgrades	\$0	\$25,850
Total general fund	\$0	\$25,850

The 2013-15 one-time funding amounts are not a part of the entity's base budget for the 2015-17 biennium. The securities commissioner shall report to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2013, and ending June 30, 2015."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1011 - Securities Department - Conference Committee Action**

	<u>Executive Budget</u>	<u>House Version</u>	<u>Conference Committee Changes</u>	<u>Conference Committee Version</u>	<u>Senate Version</u>	<u>Comparison to Senate</u>
Salaries and wages	\$1,735,950	\$1,640,682	\$33,081	\$1,673,763	\$1,741,696	(\$67,933)
Operating expenses	585,092	585,092		585,092	585,092	
Accrued leave payments		38,927		38,927		38,927
Total all funds	\$2,321,042	\$2,264,701	\$33,081	\$2,297,782	\$2,326,788	(\$29,006)
Less estimated income	195,850	195,850	(25,850)	170,000	170,000	0
General fund	\$2,125,192	\$2,068,851	\$58,931	\$2,127,782	\$2,156,788	(\$29,006)
FTE	9.00	9.00	0.00	9.00	9.00	0.00

**Department No. 414 - Securities Department - Detail of Conference Committee Changes**

	<b>Removes House Changes to Executive Compensation Package<sup>1</sup></b>	<b>Adjusts State Employee Compensation and Benefits Package<sup>2</sup></b>	<b>Adjusts Funding Source for Information Technology Upgrades<sup>3</sup></b>	<b>Total Conference Committee Changes</b>
Salaries and wages	\$62,087	(\$29,006)		\$33,081
Operating expenses				
Accrued leave payments				
<b>Total all funds</b>	<b>\$62,087</b>	<b>(\$29,006)</b>	<b>\$0</b>	<b>\$33,081</b>
Less estimated income	0	0	(25,850)	(25,850)
<b>General fund</b>	<b>\$62,087</b>	<b>(\$29,006)</b>	<b>\$25,850</b>	<b>\$58,931</b>
FTE	0.00	0.00	0.00	0.00

<sup>1</sup> Changes made by the House to the executive compensation package are removed.

<sup>2</sup> This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 3 to 5 percent for the first year of the biennium and 2 to 4 percent for the second year of the biennium.
- Reduces the market component from 2 to 4 percent per year to 1 to 2 percent per year for employees below the midpoint of their salary range.
- Reduces funding for retirement contribution increases to provide for a 1 percent state and 1 percent employee increase beginning in January 2014 and no increase in January 2015.

<sup>3</sup> The funding source for \$25,850 of information technology upgrades for the Securities Department is changed from the investor education and technology fund to the general fund, the same as the Senate version. A section is also added to provide that the funding is considered a one-time funding item. The Senate also added this section.

## 2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: House Appropriations- Government Operations

Bill/Resolution No. HB1011 as (re) engrossed

Date: April 23, 2013

Roll Call Vote #: 1

- Action Taken**
- HOUSE accede to Senate amendments
  - HOUSE accede to Senate amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows

Senate Amendments on HJ page(s) 1057 -- 1058

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) HB 1011 was placed on the Seventh order of business on the calendar

Motion Made by: Senator Bowman Seconded by: Senator Warner

Representatives	4-23	Yes	No	Senators	4-23	Yes	No
Chairman Kempenich	X	X		Senator Bowman	X	X	
Rep Hawken	X	X		Senator Wanzek	X	X	
Rep Guggisberg	X	x		Senator Warner	x	x	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep Kempenich Senate Carrier Senator Bowman

LC Number 13.8140.02002 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

To add the compensation package as in all the budget bills.

**REPORT OF CONFERENCE COMMITTEE**

**HB 1011, as engrossed:** Your conference committee (Sens. Bowman, Wanzek, Warner and Reps. Kempenich, Hawken, Guggisberg) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1057-1058, adopt amendments as follows, and place HB 1011 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1057 and 1058 of the House Journal and pages 827-829 of the Senate Journal and that Engrossed House Bill No. 1011 be amended as follows:

Page 1, replace lines 11 through 16 with:

"Salaries and wages	\$1,519,978	\$153,785	\$1,673,763
Operating expenses	706,441	(121,349)	585,092
Accrued leave payments	0	38,927	38,927
Total all funds	\$2,226,419	\$71,363	\$2,297,782
Less estimated income	317,199	(147,199)	170,000
Total general fund	\$1,909,220	\$218,562	\$2,127,782"

Page 1, after line 17, insert:

**"SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FOURTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-second legislative assembly for the 2011-13 biennium and the 2013-15 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2011-13</u>	<u>2013-15</u>
Information technology equipment upgrades	\$0	\$25,850
Total general fund	\$0	\$25,850

The 2013-15 one-time funding amounts are not a part of the entity's base budget for the 2015-17 biennium. The securities commissioner shall report to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2013, and ending June 30, 2015."

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1011 - Securities Department - Conference Committee Action**

	<u>Executive Budget</u>	<u>House Version</u>	<u>Conference Committee Changes</u>	<u>Conference Committee Version</u>	<u>Senate Version</u>	<u>Comparison to Senate</u>
Salaries and wages	\$1,735,950	\$1,640,682	\$33,081	\$1,673,763	\$1,741,696	(\$67,933)
Operating expenses	585,092	585,092		585,092	585,092	
Accrued leave payments		38,927		38,927		38,927
Total all funds	\$2,321,042	\$2,264,701	\$33,081	\$2,297,782	\$2,326,788	(\$29,006)
Less estimated income	195,850	195,850	(25,850)	170,000	170,000	0
General fund	\$2,125,192	\$2,068,851	\$58,931	\$2,127,782	\$2,156,788	(\$29,006)
FTE	9.00	9.00	0.00	9.00	9.00	0.00

**Department No. 414 - Securities Department - Detail of Conference Committee Changes**

<u>Removes House Changes</u>	<u>Adjusts State Employee</u>	<u>Adjusts Funding Source</u>	<u>Total Conference</u>
------------------------------	-------------------------------	-------------------------------	-------------------------



	to Executive Compensation Package <sup>1</sup>	Compensation and Benefits Package <sup>2</sup>	for Information Technology Upgrades <sup>3</sup>	Committee Changes
Salaries and wages	\$62,087	(\$29,006)		\$33,081
Operating expenses				
Accrued leave payments				
Total all funds	\$62,087	(\$29,006)	\$0	\$33,081
Less estimated income	0	0	(25,850)	(25,850)
General fund	\$62,087	(\$29,006)	\$25,850	\$58,931
FTE	0.00	0.00	0.00	0.00

<sup>1</sup> Changes made by the House to the executive compensation package are removed.

<sup>2</sup> This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 3 to 5 percent for the first year of the biennium and 2 to 4 percent for the second year of the biennium.
- Reduces the market component from 2 to 4 percent per year to 1 to 2 percent per year for employees below the midpoint of their salary range.
- Reduces funding for retirement contribution increases to provide for a 1 percent state and 1 percent employee increase beginning in January 2014 and no increase in January 2015.

<sup>3</sup> The funding source for \$25,850 of information technology upgrades for the Securities Department is changed from the investor education and technology fund to the general fund, the same as the Senate version. A section is also added to provide that the funding is considered a one-time funding item. The Senate also added this section.

Engrossed HB 1011 was placed on the Seventh order of business on the calendar.

**2013 TESTIMONY**

**HB 1011**

HB1011  
January 14, 2013  
Attachment 1

**House Bill 1011**

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

**Before the House Appropriations Committee**

**Government Operations Division**

**January 14, 2013**

Mr. Chairman and Members of the Committee, Good Morning. I am Karen Tyler, the State Securities Commissioner. 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 House Bill 1011.

The Department's primary 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

In addition to the administration of Securities Laws under 10-04, we also administer the North Dakota Commodities Act (51-23), Franchise Investment Law (51-19) and Pre-Need Funeral Services Law (43-10.1).

The North Dakota Securities Department is a small agency, with 9 full time employees, and we are making no requests for additional FTEs this biennium. We continue to operate as a revenue generating agency for the state, taking in over \$17 million dollars in revenue last biennium and we estimate approximately \$18 million dollars in the current biennium. Over the last several budget cycles, the agency's spending has averaged 10 - 12 cents per revenue dollar generated. Our current budget request equates to just shy of 9 cents per 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**

The Department's total budget request for the 2013-2015 biennium is \$2,321,042.00. The salaries and wages component of our budget request is increasing by \$215,972.00. This increase reflects the adjustment applied by the Office of Management and Budget for salary and benefit cost increases included in the executive budget, and this number also includes

\$38,927.00 to provide a funding source to cover the required payment for annual and sick leave balances for 2 of our employees who have reached retirement eligibility.

Our total operating appropriation request is decreasing by \$121,349.00 due to a reduction in our special funds appropriation request. This decrease comes from the ongoing restructuring of some of our investor education programs which will result in lower expenditures from the Department's special fund. The Department's request from the special fund is \$170,000.

Please note this is different than the amount indicated under the "Other Funds" category on your green sheet. OMB has prepared an amendment to address an error in the budget request.

The amendment pertains to our replacement technology expense of \$25,850.00, and it moves the funding of this replacement cycle expense out of the special fund appropriation where it was erroneously placed, and back to the general fund appropriation where it has historically resided.

As I mentioned earlier, the Department is not requesting any additional FTE positions.


With the amendment, our total general fund appropriation request is \$2,151,042.00 and our total special fund appropriation request is \$170,000.00 for a total appropriation request of \$2,321,042.00.



## 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 funding at the requested level, and drive the allocation of our resources.

- As a result of the JOBS Act passed by Congress last year, the prohibition on general solicitation of investors for private placement securities offerings is being lifted. Even with the prohibition in place, private placement securities have evolved into one of the most common vehicles for perpetration of investment fraud. With the prohibition lifted, we expect fraud and misconduct in this area to increase.
- The JOBS Act also legalizes internet solicitation of small investors by small start-up companies through a process called CROWDFUNDING. As a result, we expect internet solicitation for investment opportunities to increase significantly, and we expect investment fraud via the internet to increase along with the volume of solicitations. While the Act limits the amount that can be invested annually, even if the soliciting company is legitimate, this type of investment will carry all the risk inherent in a small start up entity – not typically appropriate for small investors with limited assets and income.




We expect both of these JOBS Act provisions to have an impact on our enforcement resources – likely resulting in an increase in investor complaints, department investigations, enforcement actions and criminal referrals.





## **INDUSTRY CONDITIONS AND 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 firms and their agents (stockbrokers) and investment advisor firms and their representatives. Despite significant challenges in the financial services industry over the last several years, we have seen steady growth in the agent and IA representative registration categories. However, we do continue to see a decrease in the number of broker dealer firm registrations. Factors contributing to the decrease include firm failures, mergers and acquisitions, and a general shift by both investors and investment professionals away from the commission based model of broker-dealer firms to the fee-based model of investment advisor firms.



For the 2013-2015 biennium, we project registration revenues to hold steady at approximately \$18 million.

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



## BIENNIUM-TO-DATE STATISTICS

### CAPITAL FORMATION

As of December 31, 2012:

63 North Dakota companies have filed for registration or exemption approval for the purpose of raising capital totaling \$209,215,912.00

The number of entities seeking registration or exemption approval is up 22% over the same period ending Dec 31, 2010.

The total amount of capital to be raised is up 16% over the same period ending Dec 31, 2010.

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

(Diverse representation of industries: Sustainable Energy, Agriculture, Technology, Real Estate, Financial Services, Professional Services, Angel Funds)

### REGISTRATION OF SECURITIES FIRMS AND PROFESSIONALS

As of December 31, 2012:

Broker-Dealer Firms	1,125
Investment Adviser Firms	644
Broker-Dealer Agents	69,218
Investment Adviser Reps	2,107

### INVESTIGATIONS, EXAMINATIONS, AND ENFORCEMENT

As of December 31, 2012:

New Enforcement Cases Opened	101
Exams Opened	11
Average Open Cases	65
Funds Ordered Returned to Investors	\$2,834,427
Penalties Assessed	\$637,580

Most prevalent violations investigated have involved 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.



# Informed Investor Advisory: Crowdfunding

## *Are you an informed investor?*

### Crowdfunding

*The Internet has become an inexpensive and easy way for individuals and businesses to raise money for their activities. Congress recently passed the JOBS Act, which directs the Securities and Exchange Commission (SEC) to create rules exempting crowdfunding from the securities registration laws. Once implemented these rules will remove restrictions on start-up companies seeking investors over the Internet. Investors should be on the lookout for unscrupulous issuers and intermediaries who may attempt to engage in crowdfunding before the rules are written or misuse crowdfunding to steal from investors through false and misleading representations.*

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### What is Crowdfunding?

Crowdfunding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects. The concept has recently been promoted as a way of assisting small businesses and start-ups looking for investment capital to help get their business ventures off the ground.

Traditionally, investment opportunities are offered by professionals, such as broker-dealer firms and investment advisers, who must recommend investments that are based on their clients' investment objectives and levels of sophistication. Through crowdfunding, individuals are able to invest in entrepreneurial start-ups through an intermediary, such as a broker-dealer or a "funding portal." By law, "funding portals" are not allowed to provide investment advice.

### What is a funding portal?

A funding portal is a website, also called a "platform," that advertises the investment opportunities and facilitates the payment from the investor to the issuer. Some portals advertise a variety of investment opportunities on one website, allowing the investor to select one or more projects in which to invest.

### How Crowdfunding Works

Joe's small business sells goat cheese made from his special pygmy goats. To keep his business afloat or to help it grow, Joe can turn to the Internet to seek online donations from the public who contribute small amounts of money and expect nothing in return. Joe usually sends a sample of his cheese as a thank you for the donation; large donors might even get a cheese named in their honor.

New legislation has directed the SEC to write rules that will change how Joe can raise money online. Once the rules are written, Joe will be able to use the Internet to raise up to \$1 million each year by selling investments in his company to thousands of investors. Because Joe will be issuing shares in his company in exchange for investment capital, his supporters are no longer donors; they become investors and will expect a financial return for their investment.

### **Why Investors Must be Extremely Cautious About Crowdfunding Investments**

- Crowdfunding investments cannot be offered legally until the SEC adopts rules to permit them. Beware of offerings that seek investments immediately.
- All investments have risk, but small business investments have even greater risk than normal. About 50 percent of all small businesses fail within the first five years.
- Issuers using funding portals to raise money may be inexperienced. Their track records maybe unproven, unsubstantiated or outright fraudulent.
- The information about the investment is limited to what is provided through the funding portal. Investors may need to rely on their own research to determine the issuer's track record.
- Because state regulators are not allowed to review crowdfunding issuers or their offerings, full and complete disclosure may not be available to investors.
- Investors may have limited legal ability to take action against the issuer should the investment not perform as represented. Due to limited regulatory oversight over these offerings, investors may be left on their own to pursue costly private lawsuits when things go wrong.
- Crowdfunding investments are mostly illiquid and investors must be prepared to hold their investments indefinitely. It also may be difficult or impossible to resell these securities due to the lack of a secondary market.
- Funding portals must be registered with the Securities and Exchange Commission (SEC), belong to a self-regulating organization (SRO), and comply with other rules the SEC may issue.
- Crowdfunding portals claiming an accreditation or "seal of approval" from a standards program or board may not be legitimate.

### **The Bottom Line**

It pays to be skeptical of investment opportunities you learn about through the Internet. When you see an offering on the Internet — whether it is on a funding portal, in an online newsletter, on a message board or in a chat room — you should be cautious until you have done your homework and proven that it isn't a scam. If you have any questions about crowdfunding offerings, contact your state or provincial securities regulator. For contact information, [click here](#).

HB1011  
January 14, 2013  
Attachment 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1011

Page 1, line 14, overstrike "(121,349)" and insert immediately thereafter "(147,199)"

Page 1, line 14, overstrike "195,850" and insert immediately thereafter "170,000"

Page 1, line 15, overstrike "\$215,972" and insert immediately thereafter "\$241,822"

Page 1, line 15, overstrike "\$2,125,192" and insert immediately thereafter "\$2,151,042"

Renumber accordingly

Prepared By Office of Management and Budget

January 14, 2013

ND1011  
January 14, 2013  
Attachment 3

**HB 1011 Appropriation - Gov't Ops  
ND Securities Department  
IT Replacement/Upgrade Budget 2013-2015**

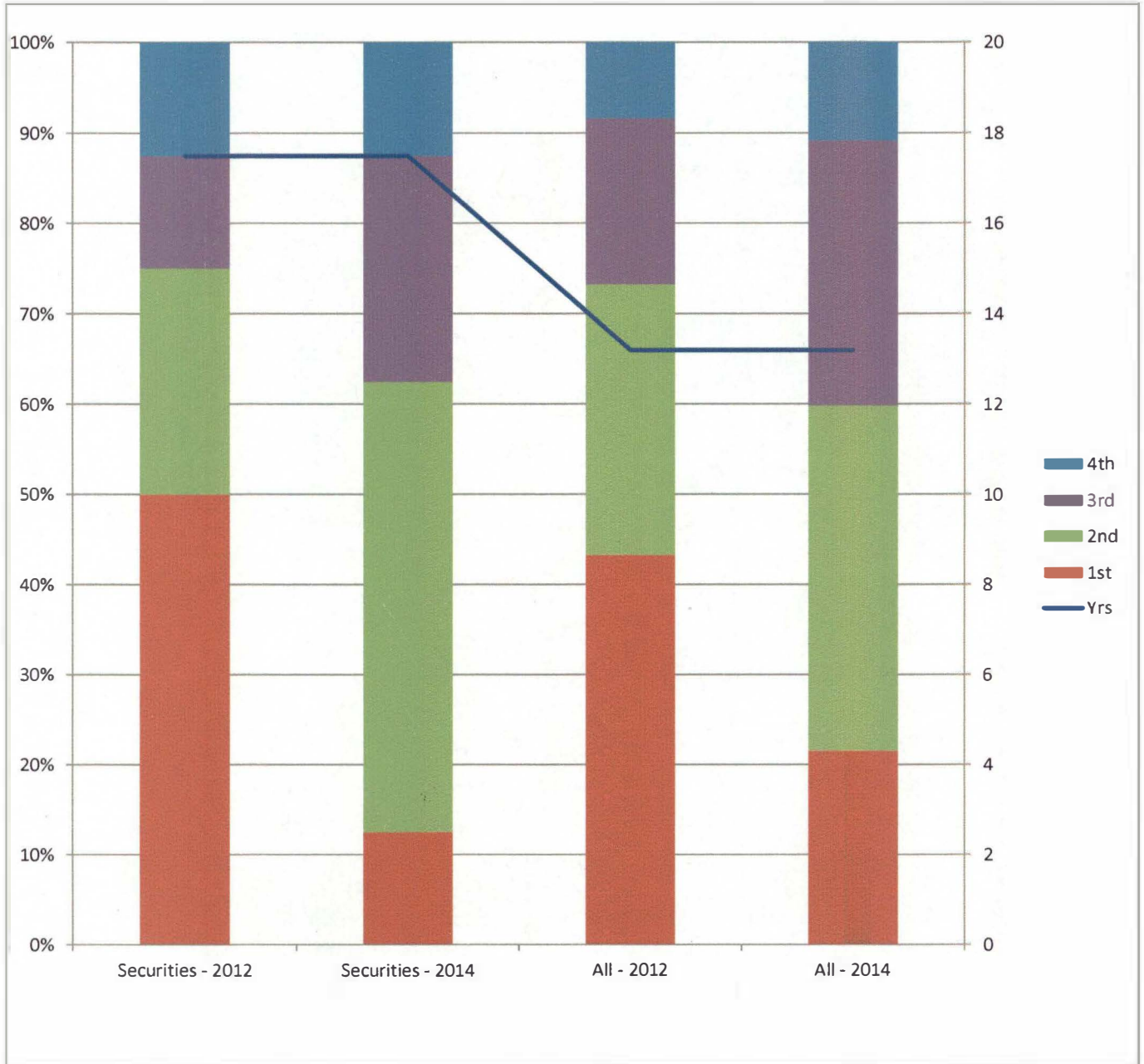
<b>Item</b>	<b>Part #</b>	<b>Unit Price</b>	<b># Units</b>	<b>Total</b>
<b>Hardware:</b>				
HP Workstation Laptop EliteBook 8560W Mobile	XX058AV	2,303.00	4	9,212.00
HP 230W Docking Station	VB043AA#ABA	176.00	4	704.00
HP Performance Desktop-8200 Elite CMT	XL508AV-CEC	984.00	5	4,920.00
HP LaserJet Printer	CE992A#BGJ	1,150.00	2	2,299.00
HP LaserJet 500 sheet input tray feeder	CE998A	240.00	2	478.00
HP LaserJet 75 Sheet Envelope Feeder	CE399A	240.00	2	478.00
				<b>\$18,091.00</b>
<b>Software</b>				
Microsoft Office Professional 2010 license		326.00	9	2,934.00
MS Office Professional Installation DVD		27.00	2	54.00
2 Time Matters upgrades		1,000.00	2	2,000.00
Adobe Acrobat Version X Professional Upgrade		199.00	5	995.00
Adobe Acrobat Version X Professional New		449.00	1	449.00
				<b>\$6,432.00</b>
NGR Services - Tech Support		130.00	10.5	1,365.00
				<b>TOTAL: <u><u>\$25,888.00</u></u></b>

Information requested by Chairman Thoreson  
1-14-2012 DL

								Current C/R		Projected 2013 C/R		Projected 2014 C/R		EXAMPLE													
Relativity to Market Policy Position *				+ Meet Standards		+ Exceed Standards																					
MPP +				0%		+		3.0%		5.0%																	
2nd Qtl				1 - 2.0%																							
1st Qtl				2 - 4.0%																							
* ALL increases contingent upon Performance Meeting Standards																											
								2013								2014											
CURRENT								Market Policy Position Increase		Performance Increase		Total Increase		After July 1, 2013				Market Policy Position Increase		Performance Increase		Total Increase		After July 1, 2014			
Yrs Svc	Job Title	FTE Ann Sal	Grade	Market Policy Point	FTE	C/R (Current)	2012 Qtl	%%	\$\$	%%	\$\$	%%	\$\$	2013 New Salary	New MPP (3% range increment)	2013 New C/R	2013 Qtl	%%	\$\$	%%	\$\$	%%	\$\$	2014 New Salary	New MPP (3% range increment)	2014 New C/R	2014 Qtl
16.6	FIN & SEC EXMNR/INV II	62,637	L	60,564	1.00	1.03	3	0.0%	-	3.0%	1,879	3.0%	1,879	64,516	62,381	1.03	3	0.0%	-	3.0%	1,935	3.0%	1,935	66,451	64,252	1.03	3
12.3	FIN & SEC EXMNR/INV II	56,918	L	60,564	1.00	0.94	2	2.0%	1,138	5.0%	2,846	7.0%	3,984	60,902	62,381	0.98	2	2.0%	1,218	5.0%	3,045	7.0%	4,263	65,165	64,252	1.01	3
47.4	FIN & SEC EXMNR/INV II	72,031	L	60,564	1.00	1.19	4	0.0%	-	3.0%	2,161	3.0%	2,161	74,192	62,381	1.19	4	0.0%	-	3.0%	2,226	3.0%	2,226	76,418	64,252	1.19	4
6.8	FIN & SEC EXMNR/INV II	49,411	L	60,564	1.00	0.82	1	4.0%	1,976	5.0%	2,471	9.0%	4,447	53,858	62,381	0.86	1	4.0%	2,154	5.0%	2,693	9.0%	4,847	58,705	64,252	0.91	2
21.8	SECURITIES EXAM/INV SUPERVISOR	63,854	N	73,130	1.00	0.87	1	4.0%	2,554	3.0%	1,916	7.0%	4,470	68,324	75,324	0.91	2	2.0%	1,366	3.0%	2,050	5.0%	3,416	71,740	77,584	0.92	2
5.5	ATTORNEY III	86,001	Q	91,567	1.00	0.94	2	2.0%	1,720	5.0%	4,300	7.0%	6,020	92,021	94,314	0.98	2	2.0%	1,840	5.0%	4,601	7.0%	6,441	98,462	97,143	1.01	3
4.7	PUBLIC INFO SPEC III	47,907	L	60,564	1.00	0.79	1	4.0%	1,916	3.0%	1,437	7.0%	3,353	51,260	62,381	0.82	1	4.0%	2,050	3.0%	1,538	7.0%	3,588	54,848	64,252	0.85	1
27.1	ADMIN STAFF OFFICER I	43,120	J	50,985	1.00	0.85	1	4.0%	1,725	5.0%	2,156	9.0%	3,881	47,001	52,515	0.90	2	2.0%	940	5.0%	2,350	7.0%	3,290	50,291	54,090	0.93	2
17.8		481,879				0.93		2.5%	11,029	4.0%	19,166	6.5%	30,195			0.96		2.0%	9,568	4.0%	20,438	6.0%	30,006			0.98	

414 - Securities - 2012-14 Quartile Charts

HB1011  
 January 21, 2013  
 Attachment 2



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1011

Page 1, replace lines 11 through 15 with:

"Salaries and wages	\$1,519,978	\$120,704	\$1,640,682
Operating expenses	706,441	(121,349)	585,092
Accrued leave payments	<u>0</u>	<u>38,927</u>	<u>38,927</u>
Total all funds	\$2,226,419	\$38,282	\$2,264,701
Less estimated income	<u>317,199</u>	<u>(147,199)</u>	<u>170,000</u>
Total general fund	\$1,909,220	\$185,481	\$2,094,701"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

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

	Executive Budget	House Changes	House Version
Salaries and wages	\$1,735,950	(\$95,268)	\$1,640,682
Operating expenses	585,092		585,092
Accrued leave payments		38,927	38,927
Total all funds	\$2,321,042	(\$56,341)	\$2,264,701
Less estimated income	<u>195,850</u>	<u>(25,850)</u>	<u>170,000</u>
General fund	\$2,125,192	(\$30,491)	\$2,094,701
FTE	9.00	0.00	9.00

**Department No. 414 - Securities Department - Detail of House Changes**

	Corrects Executive Compensation Package <sup>1</sup>	Adjusts State Employee Compensation and Benefits Package <sup>2</sup>	Provides Separate Line Item for Accrued Leave Payments <sup>3</sup>	Adjusts Funding Source for Information Technology Upgrades <sup>4</sup>	Total House Changes
Salaries and wages	\$5,746	(\$62,087)	(\$38,927)		(\$95,268)
Operating expenses					
Accrued leave payments			38,927		38,927
Total all funds	\$5,746	(\$62,087)	\$0	\$0	(\$56,341)
Less estimated income	<u>0</u>	<u>0</u>	<u>0</u>	<u>(25,850)</u>	<u>(25,850)</u>
General fund	\$5,746	(\$62,087)	\$0	\$25,850	(\$30,491)
FTE	0.00	0.00	0.00	0.00	0.00

<sup>1</sup>Funding is added due to a calculation error in the executive compensation package.

<sup>2</sup>This amendment adjusts the state employee compensation and benefits package as follows:

- Reduces the performance component from 3 to 5 percent per year to 2 to 4 percent year.
- Reduces the market component from 2 to 4 percent per year for employees below the midpoint of their salary range to up to 2 percent for employees in the first quartile of their salary range for the first year of the biennium only.
- Removes funding for additional retirement contribution increases.

<sup>3</sup>Funding included in the executive budget for accrued leave payments for the Securities Department is reallocated to an accrued leave payments line item.

<sup>4</sup>The funding source for \$25,850 of information technology upgrades for the Securities Department is changed from the investor education and technology fund to the general fund.



# ↓

**House Bill 1011**

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

**Before the Senate Appropriations Committee**

**March 6, 2013**

Mr. Chairman and Members of the Committee, Good Morning. I am Karen Tyler, the State Securities Commissioner. 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 the Department's budget request, which remains consistent with the executive budget proposal set forth by Governor Dalrymple.

The Department's primary 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

In addition to the administration of Securities Laws under 10-04, we also administer the North Dakota Commodities Act (51-23), Franchise Investment Law (51-19) and Pre-Need Funeral Services Law (43-10.1).

The North Dakota Securities Department is a small agency, with 9 full time employees, and we are making no requests for additional FTEs this biennium. We continue to operate as a revenue generating agency for the state, taking in over \$17 million dollars in revenue last biennium and we estimate approximately \$18 million dollars in the current biennium. Over the last several budget cycles, the agency's spending has averaged 10 - 12 cents per revenue dollar generated. Our current budget request equates to just shy of 9 cents per 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**

The Department's total budget request for the 2013-2015 biennium is \$2,321,042.00. The salaries and wages component of our budget request is increasing by \$215,972.00. This increase reflects the adjustment applied by the Office of Management and Budget for salary and benefit cost increases included in the executive budget, and this number also includes

\$38,927.00 to provide a funding source to cover the required payment for annual and sick leave balances for 2 of our employees who have reached retirement eligibility.

Our total operating appropriation request is decreasing by \$121,349.00 due to a reduction in our special funds appropriation request. This decrease comes from the ongoing restructuring of some of our investor education programs which will result in lower expenditures from the Department's special fund. The Department's request from the special fund is \$170,000.

OMB has prepared an amendment to address an error in the Department's budget request. The amendment pertains to our replacement technology expense of \$25,850.00, and it moves the funding of this replacement cycle expense out of the special fund appropriation where it was erroneously placed, and back to the general fund appropriation where it has historically resided.

As I mentioned earlier, the Department is not requesting any additional FTE positions.

With the amendment, our total general fund appropriation request is \$2,151,042.00 and our total special fund appropriation request is \$170,000.00 for a total appropriation request of \$2,321,042.00.

#### **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 funding at the requested level, and drive the allocation of our resources.

- As a result of the JOBS Act passed by Congress last year, the prohibition on general solicitation of investors for private placement securities offerings is being lifted. Even with the prohibition in place, private placement securities have evolved into one of the most common vehicles for perpetration of investment fraud. With the prohibition lifted, we expect fraud and misconduct in this area to increase.
- The JOBS Act also legalizes internet solicitation of small investors by small start-up companies through a process called CROWDFUNDING. As a result, we expect internet solicitation for investment opportunities to increase significantly, and we expect investment fraud via the internet to increase along with the volume of solicitations. While the Act limits the amount that can be invested annually, even if the soliciting company is legitimate, this type of investment will carry all the risk inherent in a small start up entity – not typically appropriate for small investors with limited assets and income.

We expect both of these JOBS Act provisions to have an impact on our enforcement resources – likely resulting in an increase in investor complaints, department investigations, enforcement actions and criminal referrals.


## **INDUSTRY CONDITIONS AND 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 firms and their agents (stockbrokers) and investment advisor firms and their representatives. Despite significant



challenges in the financial services industry over the last several years, we have seen steady growth in the agent and IA representative registration categories. However, we do continue to see a decrease in the number of broker dealer firm registrations. Factors contributing to the decrease include firm failures, mergers and acquisitions, and a general shift by both investors and investment professionals away from the commission based model of broker-dealer firms to the fee-based model of investment advisor firms.

For the 2013-2015 biennium, we project registration revenues to hold steady at approximately \$18 million.



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



## BIENNIUM-TO-DATE STATISTICS

### CAPITAL FORMATION

As of December 31, 2012:

63 North Dakota companies have filed for registration or exemption approval for the purpose of raising capital totaling \$209,215,912.00

The number of entities seeking registration or exemption approval is up 22% over the same period ending Dec 31, 2010.

The total amount of capital to be raised is up 16% over the same period ending Dec 31, 2010.

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

(Diverse representation of industries: Sustainable Energy, Agriculture, Technology, Real Estate, Financial Services, Professional Services, Angel Funds)

### REGISTRATION OF SECURITIES FIRMS AND PROFESSIONALS

As of December 31, 2012:

Broker-Dealer Firms	1,125
Investment Adviser Firms	644
Broker-Dealer Agents	69,218
Investment Adviser Reps	2,107

### INVESTIGATIONS, EXAMINATIONS, AND ENFORCEMENT

As of December 31, 2012:

New Enforcement Cases Opened	101
Exams Opened	11
Average Open Cases	65
Funds Ordered Returned to Investors	\$2,834,427
Penalties Assessed	\$637,580

Most prevalent violations investigated have involved 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.

# Informed Investor Advisory: Crowdfunding

## *Are you an informed investor?*

### Crowdfunding

*The Internet has become an inexpensive and easy way for individuals and businesses to raise money for their activities. Congress recently passed the JOBS Act, which directs the Securities and Exchange Commission (SEC) to create rules exempting crowdfunding from the securities registration laws. Once implemented these rules will remove restrictions on start-up companies seeking investors over the Internet. Investors should be on the lookout for unscrupulous issuers and intermediaries who may attempt to engage in crowdfunding before the rules are written or misuse crowdfunding to steal from investors through false and misleading representations.*

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### What is Crowdfunding?

Crowdfunding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects. The concept has recently been promoted as a way of assisting small businesses and start-ups looking for investment capital to help get their business ventures off the ground.

Traditionally, investment opportunities are offered by professionals, such as broker-dealer firms and investment advisers, who must recommend investments that are based on their clients' investment objectives and levels of sophistication. Through crowdfunding, individuals are able to invest in entrepreneurial start-ups through an intermediary, such as a broker-dealer or a "funding portal." By law, "funding portals" are not allowed to provide investment advice.

### What is a funding portal?

A funding portal is a website, also called a "platform," that advertises the investment opportunities and facilitates the payment from the investor to the issuer. Some portals advertise a variety of investment opportunities on one website, allowing the investor to select one or more projects in which to invest.

### How Crowdfunding Works

Joe's small business sells goat cheese made from his special pygmy goats. To keep his business afloat or to help it grow, Joe can turn to the Internet to seek online donations from the public who contribute small amounts of money and expect nothing in return. Joe usually sends a sample of his cheese as a thank you for the donation; large donors might even get a cheese named in their honor.

New legislation has directed the SEC to write rules that will change how Joe can raise money online. Once the rules are written, Joe will be able to use the Internet to raise up to \$1 million each year by selling investments in his company to thousands of investors. Because Joe will be issuing shares in his company in exchange for investment capital, his supporters are no longer donors; they become investors and will expect a financial return for their investment.

### **Why Investors Must be Extremely Cautious About Crowdfunding Investments**

- Crowdfunding investments cannot be offered legally until the SEC adopts rules to permit them. Beware of offerings that seek investments immediately.
- All investments have risk, but small business investments have even greater risk than normal. About 50 percent of all small businesses fail within the first five years.
- Issuers using funding portals to raise money may be inexperienced. Their track records maybe unproven, unsubstantiated or outright fraudulent.
- The information about the investment is limited to what is provided through the funding portal. Investors may need to rely on their own research to determine the issuer's track record.
- Because state regulators are not allowed to review crowdfunding issuers or their offerings, full and complete disclosure may not be available to investors.
- Investors may have limited legal ability to take action against the issuer should the investment not perform as represented. Due to limited regulatory oversight over these offerings, investors may be left on their own to pursue costly private lawsuits when things go wrong.
- Crowdfunding investments are mostly illiquid and investors must be prepared to hold their investments indefinitely. It also may be difficult or impossible to resell these securities due to the lack of a secondary market.
- Funding portals must be registered with the Securities and Exchange Commission (SEC), belong to a self-regulating organization (SRO), and comply with other rules the SEC may issue.
- Crowdfunding portals claiming an accreditation or "seal of approval" from a standards program or board may not be legitimate.

### **The Bottom Line**

It pays to be skeptical of investment opportunities you learn about through the Internet. When you see an offering on the Internet — whether it is on a funding portal, in an online newsletter, on a message board or in a chat room — you should be cautious until you have done your homework and proven that it isn't a scam. If you have any questions about crowdfunding offerings, contact your state or provincial securities regulator. For contact information, click here.



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1011

Page 1, replace lines 11 through 16 with:

"Salaries and wages	\$1,519,978	\$221,718	\$1,741,696
Operating expenses	<u>706,441</u>	<u>(121,349)</u>	<u>585,092</u>
Total all funds	\$2,226,419	\$100,369	\$2,326,788
Less estimated income	<u>317,199</u>	<u>(147,199)</u>	<u>170,000</u>
Total general fund	\$1,909,220	\$247,568	\$2,156,788"

Page 1, after line 17, insert:

**"SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-FOURTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time funding items approved by the sixty-second legislative assembly for the 2011-13 biennium and the 2013-15 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2011-13</u>	<u>2013-15</u>
Information technology equipment upgrades	\$0	\$25,850
Retirement leave payouts	<u>0</u>	<u>38,927</u>
Total general fund	\$0	\$64,777

The 2013-15 one-time funding amounts are not a part of the entity's base budget for the 2015-17 biennium. The securities commissioner shall report to the appropriations committees of the sixty-fourth legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2013, and ending June 30, 2015."

Re-number accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

**House Bill No. 1011 - Securities Department - Senate Action**

	<b>Executive Budget</b>	<b>House Version</b>	<b>Senate Changes</b>	<b>Senate Version</b>
Salaries and wages	\$1,735,950	\$1,640,682	\$101,014	\$1,741,696
Operating expenses	585,092	585,092		585,092
Accrued leave payments		<u>38,927</u>	<u>(38,927)</u>	
Total all funds	\$2,321,042	\$2,264,701	\$62,087	\$2,326,788
Less estimated income	<u>195,850</u>	<u>195,850</u>	<u>(25,850)</u>	<u>170,000</u>
General fund	\$2,125,192	\$2,068,851	\$87,937	\$2,156,788
FTE	9.00	9.00	0.00	9.00

**Department No. 414 - Securities Department - Detail of Senate Changes**

	<b>Restores Executive Compensation Package<sup>1</sup></b>	<b>Removes Separate Line Item for Accrued Leave Payments<sup>2</sup></b>	<b>Adjusts Funding Source for Information Technology Upgrades<sup>3</sup></b>	<b>Total Senate Changes</b>
Salaries and wages	\$62,087	\$38,927		\$101,014
Operating expenses				
Accrued leave payments		<u>(38,927)</u>		<u>(38,927)</u>

Total all funds	\$62,087	\$0	\$0	\$62,087
Less estimated income	0	0	(25,850)	(25,850)
	\$62,087	\$0	\$25,850	\$87,937
General fund				
FTE	0.00	0.00	0.00	0.00

<sup>1</sup>Funding reductions made by the House to the state employee compensation and benefits package are restored to the Governor's recommended level.

<sup>2</sup>The accrued leave payments line item added by the House is removed and the associated funding returned to line items with salaries and wages funding.

<sup>3</sup>The funding source for \$25,850 of information technology upgrades for the Securities Department is changed from the investor education and technology fund to the general fund.

This amendment also adds a section to provide that funding from the general fund for information technology upgrades and retirement leave payouts is considered one-time funding.