COMMITTEE ON COMMERCE, SMALL BUSINESS

AND CONSUMER AFFAIRS

Public Hearing on House Bill 446

CHAIRMAN: ... call on the sponsor, Representative Judy Reardon, of Hillsborough District 37. And, Representative, before you start, I'd just like something clarified on the analysis of this bill. Where it says, "this bill modifies the registration process for foreign limited..." Should there be a comma after "foreign"?

REP. REARDON: I, grammatically, wouldn't put one there. But if you did --

CHAIRMAN: This covers, then, foreign limited partnerships. No local partnerships.

REP. REARDON: Correct.

CHAIRMAN: Okay. Thank you. The floor is yours.

REP. REARDON: Mr. Chairman, members of the committee, my name is Judy Reardon. I represent one of the wards in Manchester.

Last year this committee worked for some period of time, and then the House and the Senate enacted, a piece of legislation that required businesses in New Hampshire to make certain filings with the Department of Insurance, the purpose being to protect investors from fraud. It was a fairly complicated piece of legislation, and I think with many complicated pieces of legislation, you can't tell how it's really going to work out until it's in operation. And then you can fine-tune it, and try to take care of some of the kinks.

I introduced this -- I'm a lawyer, but I'm not a corporate lawyer, and I really don't know that much about corporate law -- but I introduced this at the request of one of the corporate lawyers at my law firm, who's had to work with the legislation that we enacted last year. And my understanding is that some of the filings that are required under the legislation that we enacted last year really don't do the trick. And what House Bill 446 does, essentially, is make some very minor substance, but important in terms of how the process works, technical amendments.

Unfortunately -- and I have to apologize to you -- the corporate lawyer at my firm, Dick Samuels, was supposed to be here to testify, and I just called him and he thought the hearing was at 11:30, so he's on his way up.

And so, I'll be happy to answer any questions, or attempt to answer any questions, you have, but frankly, I'm not an expert on corporate law, and I'm not sure I can answer technical questions. But I can answer general questions about the process, and what the problems are.

CHAIRMAN: Thank you. Representative Pantzer for a question.

REP. PANTZER: Thank you, Mr. Chairman. Representative Reardon, are you aware that this RSA 421-B:13 (1) (a) is also going to be further amended in a bill I'm submitting with Senator Disnard?

REP. REARDON: No. I'm not aware of that.

REP. PANTZER: To take care of corporations or limited partnerships that change their mind and decide that they will -- having decided not to issue securities, they go from a negative to a positive census, "Yes, we're going to do that." So this portion will be broken into. Certainly it's unfortunate. The first paragraph.

It's sounds to me as if it's a very loaded kind of thing. I haven't really gotten the full impact of these statements. Further down, in the last paragraph, I am one of the sponsors of the one, of the complicated piece of legislation of last year. And there will also be a fee worked into this -- a $20 fee for the registrations, under legislation that's going in this session, as a part of the Dismard bill.

CHAIRMAN: The question was, Are you aware of all that?

REP. REARDON: No, I'm not. And I'm not sure, really, how this would mix with your legislation. My understanding of one of the problems of the legislation that we enacted last year was that it required certain filings to be made before they could get their articles of incorporation, for example. And that the filings that are required ask the company to make representations that the company's really not in a position to make before they're incorporated. What you're going to do in terms of securities, and so on and so forth.

That when a company is getting their articles of incorporation, that they're not really in a position to do that.

So I'm not sure that --

REP. PANTZER: What if they change their minds? Why can't they change their minds? You know, they say "No" at one point, and they say "Yes" at another -- now we're going to do it. It doesn't bind them, really, if they have a pre-election, if the process allows them to declare themselves negatively at first, and then positively later. And we're making the second step easier for them, under this other piece of legislation.

CHAIRMAN: Maybe we should stop this discussion now. We're going to have a corporate lawyer show up. Representative Pantzer, why don't you --

REP. PANTZER: (Inaudible)

REP. REARDON: Yes, sir. The fellow who's coming from my law firm, Dick Samuels, I'm sure would be happy, if you want his expertise, to work with you, you know, on your bill, and this bill, and maybe come up with some sort of combined package to take care of whatever, you know, technical problems have arisen the last few months.

CHAIRMAN: Any further questions for Representative Reardon?

If not, thank you for your testimony.

REP. REARDON: Thank you.

CHAIRMAN: And we'll hold a slot open for your compatriot coming along.

Call on Christopher Morgan, representing the Secretary of State.

MR. MORGAN: Thank you, Mr. Chairman, members of the committee. I'm Christopher Morgan, I'm head of the Corporate Division. I'm not a corporate lawyer, but I deal with matters. And I just want to say that the legislation that was enacted last year did cause quite a bit of confusion among the businesses that deal with our office. And the intent of this bill, as I understand it, is to clarify the language that governs the filings of these securities statements and the corporate papers with our office.

Most of it is just technical corrections. The wrong terms were used for foreign partnerships, for foreign limited partnerships, and so on. Most of the bill is just correcting it to include the correct terminology. So we would -- I think it would make life a little less confusing for the people who deal with this.

CHAIRMAN: Thank you. Any questions of Mr. Morgan?

Seeing none, thank you for your testimony.

Those are the only two cards that I have to speak at this hearing.

REP. PANTZER: May I ask Mr. Morgan a question?

CHAIRMAN: You had your chance, and Mr. Morgan, step right back there and give him another chance.

REP. PANTZER: Did the Securities Department, have you conferred with somebody over there about this as well? I assume this represents your joint wisdom.

MR. MORGAN: I actually haven't talked to them about this bill. I don't know whether Mr. Samuels has or not. But I can't imagine they'd have any objection to it.

CHAIRMAN: I have a further question. Did Mr. Gardner send you over to represent his department?

MR. MORGAN: Yes.

CHAIRMAN: And he thought, he's gone through this and approved it?

MR. MORGAN: Yes.

CHAIRMAN: So do you think he had contact with the Securities Division?

MR. MORGAN: I wouldn't know.

CHAIRMAN: Thank you.

Well, how fast is that fellow coming over here?

REP. REARDON: We're in Manchester, and I guess it probably takes me about 20 minutes. But I think it will probably take him 30 minutes to get here, so I'd say 11:30. I called him right before 11, when I noticed that he wasn't here.

CHAIRMAN: Let's recess right now to 11:30. The hearing is now in recess and will reopen at 11:30.

(Hearing recessed)

(Hearing reopened)

MR. SAMUELS: ... apologize to everyone for being late. Those of you who were here yesterday realize I was here yesterday afternoon testifying on a wholly different matter, and I guess I assumed that everything you do is at 2:00. And I don't suppose that's right.

I'm here, really, on my own behalf, as Judy Reardon may have explained to you. Last year, this committee considered two bills that had to do with amending the securities laws in connection with incorporation or registration of foreign corporations and limited partnerships. There were certain problems, and that was passed by both Houses, went into effect last summer. And there are certain problems with that law, really having mostly to do with the language of the law. I would just like to point out, very quickly, what the problems are, and what the solutions are.

The intention behind my bill, with one minor exception, does not affect the substance of last year's legislation, and I'll point that exception out when I get to it.

The first problem -- and this is section one of the bill -- is that presently the Secretary of State may not accept articles of incorporation from foreign entities seeking to register in the state, without the Securities Division certification. However, the Secretary of State does not accept articles of incorporation. What it accepts are certificates for applications to do business in the state. So the language simply ought to be changed to comply with reality. The Secretary of State doesn't collect, and doesn't want to collect, articles of incorporation. The only change in section one, then, is to make it apply to applications, rather than articles of incorporation.

Second section amends RSA 305-A, which is the registration of foreign partnerships statute. And it's very similar to my first section --

CHAIRMAN: You've lost me right now. Where are we talking about?

MR. SAMUELS: Well, it's page 2, line 2. Section 2 of the bill.

CHAIRMAN: Okay.

MR. SAMUELS: This particular section of the registration of foreign partnerships statute now reads that articles of incorporation can't be accepted by the Secretary of State without this certification from the Securities Division. The Secretary of State doesn't accept articles of incorporation, anyway. What they accept are applications for certificates of authority. Therefore, this would change it to, again, just conform to practice.

Third, which is line 8 on the second page, gets a little more complicated here. RSA 421-B is the state securities act. And right now, section 13 of that state securities act is where the certificate requirements are laid out. And you get a certificate

from the Securities Division by making a certain statement to the Securities Division, and this is the section that says, "Here's what you have to state."

CHAIRMAN: Where's that?

MR. SAMUELS: This is lines 10 through 25 on page 2, and carrying over on page 3.

As I've amended it, the first amendment which you see in the italicized language is the really the same amendment: certificates of authority are what the Secretary of State does. The Secretary of State technically doesn't register foreign partnerships, so this is just a change in language again, to conform to what occurs in the present practice under the other laws that govern the Secretary of State's actions.

When you get to line 17 through the remainder of this section on page 2, it's a little more complicated. Right now, a statement has to be filed that says that securities that your entity issues are either registered or exempted. This is a little bit of a "cart-before-the-horse" problem. An entity -- whether it's a corporation or a limited partnership -- can't issue or can't offer securities until it is an entity. And it can't become an entity until it registers with the Secretary of State. And right now, the law requires that you get a certification before registering with the Secretary of State -- it's really a Catch-22.

The Secretary of State's office and Bob Robitaille at the Division of Securities have -- necessarily, I think -- chosen to overlook the cart-before-the-horse, and they place the horse before the cart, and have required a statement that says, you'll file something that states that you "have registered or will register," or "have exempted or will exempt" your securities. Now, that future tense "will" is not in the statute, but it is really necessary in almost every case to be there, since the corporation, when it's speaking about its securities, can't issue them before they're formed, and necessarily has to talk about its future actions. And it become more a promise, but you can't really ask for more. You can't register securities before you can issue them.

So I've changed the language here to include the future tense as an option, which, as I say, is presently the form of the statement that has been requested by the Securities Division.

One other thing I've done here. Right now, the statute speaks to registration or exemption of the securities, and this is a technical matter. You can register securities, or your securities can be exempt from registration, either because the securities, by their very nature, are exempt from registration. An example would be IDA bonds are exempt from registration. Or, alternatively, they're exempt from registration because the particular transaction in which they're being offered is exempt from registration. An example of this is issuance of stock in connection with a merger, a statutory merger. It might be a corporation that otherwise would have had to register the securities. But because of that transaction, a merger transaction, the transaction is exempted.

So rather than speak of registration or exemption of securities, as I've amended it, it speaks to registration of securities or exemption of securities or exemption of the transaction in which the securities are registered.

Again, it conforms to the state securities law, and practice under the state securities law.

And I guess I recognize that this is kind of a technical area, and if anyone has questions as I go along, it might be best to ask them as I go along, rather than have them all lost in the muddle of this testimony at the end. Is that something you'd like to do?

CHAIRMAN: We'll take care of that. I think we'll go along in the regular way. You give your testimony, and then I'm sure the people who are going to ask questions are making notes on what they wanted to ask.

MR. SAMUELS: Okay, fine.

On page 3, we're still in the same section, which is section 13 of our state securities act, I've deleted a sentence beginning on lines 2 through line 5, and added a very similar sentence that is in italicized language on lines 5 through line 8, of page 3. Right now, you've got a sentence here in the statute that specifies that for new incorporations, incorporators have to sign; for new limited partnerships, the intended general partner has to sign. That's fine, but foreign entities that are already in existence also are registering and making these statements to the Securities Division of the Insurance Department. And I thought it'd be best to specify, for those already-in-existence entities, who signs for them. Therefore, the sentence is really expanded to add "by an executive officer of an existing corporation, or by the intended general partners of a limited partnership."

The next, and final, section of this bill, section four, which is lines 11 through 25 of page 3, is intended to address the financial reporting requirements, which was a separate bill which was enacted last year. Right now, all corporations and limited partnerships that have securities registered with the Insurance Department have to file quarterly and annual financial statements with the Securities Division. There is no penalty for not filing those quarterly and annual financial statements in the statute, except for one. And that one is that, if the entity files an annual report with the Secretary of State, the Secretary of State will not accept that annual report, if the annual financial statement for the corporation or limited partnership has been filed with the Securities Division.

That makes sense, except that there are two sorts of entities that have securities registered. There are corporations and there are limited partnerships. However, only corporations, and not limited partnerships, file annual reports with the Secretary of State's office. Therefore, insofar as the statute presently reads that the Secretary of State shall not accept annual reports of limited partnerships unless the financial statements are filed, it just doesn't make any sense. They don't get annual reports from limited partnerships, anyway. I think the bill should be changed here, again, to reflect reality. And penalize only those corporations who fail to file financials in this particular manner.

And that's the end of my testimony.

CHAIRMAN: Representative Pantzer for a question.

REP. PANTZER: Yes, thank you, Mr. Chairman. First, Mr. Samuels, if the law was changed, and this is an error, and I understand. The law was changed so that limited partnerships do have to file an annual report. That was one of the changes in the law. Now you want to take that out, and go back to the law as before. We added that to it. Corporations -- you are quite right. But that law passed last year,

one of the two of them, did require that limited partnerships file annual reports. That would be new.

MR. SAMUELS: And that's an amendment to the limited partnership act?

REP. PANTZER: Yes.

MR. SAMUELS: I didn't realize that.

REP. PANTZER: Then, on -- The question I wanted to ask you was: You say that the -- If you would repeat your objection to section one, you want it changed to application? We are aware that the Secretary of State, the drafters of this bill were aware that the Secretary of State did not accept anything except applications. But were you aware that what was desired, in this original bill, was to have the information, the certification, if you will, as to the status of the company issuing securities, located in two places. We wanted this duplicate information both at the Securities Division and the Secretary of State. We know that has nothing to do with the Secretary of State, per se, who accepts registration for corporations. But were you aware that we wanted to have this duplicate information on file in both places?

MR. SAMUELS: Yes, but it still would be on file. This bill doesn't change.

REP. PANTZER: Oh, yes it does. Because it puts it on the computer as soon as it goes to the State Department, if it was not on the computer when it was in the Securities Division. They're sitting over there on Manchester Drive, or whatever it is.

MR. SAMUELS: Under the procedure that would follow if my bill was enacted, these statements to get the certification of the Securities Division would still have to be filed by all of the same entities that file right now. And the person who files that statement gets the certificate, would still have to go Bob Robitaille, get the signed certificate back, and submit it to the Corporations Division of the Secretary of State. Which would then also have it on file. Bob Robitaille requires two. He keeps one, and you take one to the Secretary of State's office. And this does not change that.

CHAIRMAN: Further questions?

REP. PANTZER: May I ask, what is the -- You seem to object to a person changing his mind. As I understood, when we passed this bill last year, we allowed for somebody who said, "We're not going issue securities. We don't issue securities, and we're not affected by this legislation." Then you change your mind, and you simply go through the application process.

Now you want them to say, "We don't issue securities, but we're going to issue them in six months." The $20 fee has been filed, you simply change your status and update yourself. I think that's simple, and now we have -- you're proposing all these clauses: "will be exempted," "a transaction exempted," and it just seems to me that may be much more difficult to translate, at least for a person on the streets. They're already baffled by the legislation, I understand.

MR. SAMUELS: They sure are. And as a private practitioner doing corporate law, I have no objection to this bill from the point of view of my income. It's been good for lawyers. I don't know if you want to hear that or not. But from the point of view of a citizen of New Hampshire, I don't know what it's cheap. But -- So

it is a little bit baffling right now. I really don't think it would be more baffling if you changed it, but let me address some of the points that you made.

First of all, it is impossible -- in fact, probably illegal -- to issue, under federal and state law -- to issue securities if you have not yet formed your corporation. Let's talk about corporations, and make it easy. New Hampshire law, right now, requires me to say that my securities have been exempted or registered before I even form my corporation. It cannot be done. I cannot, in good faith, make that statement. I wouldn't do it on behalf of my clients. I wouldn't advise my clients to do it.

Bob Robitaille has recognized that, and in the -- maybe I should've had more copies of this -- in the form or statement that he has required, he has left room for present-ten statements, recognizing that a corporation or a limited partnership that is not yet formed cannot do anything but make present-tense statements. You cannot say that your securities are registered, because it is impossible to have done so. You can say that they will be registered. Or you can say that they will be exempted.

But I don't have any economic interest in this bill. I think that -- and I really am not trying to change the substance of last year's legislation. I think that it's very unfortunate that you've got a law on the books right now that cannot, the literal terms of which, cannot be complied with by two state agencies. That shouldn't be the case.

REP. PANTZER: May I ask a further question, Mr. Chairman?

CHAIRMAN: Further question.

REP. PANTZER: As to issuance --

CHAIRMAN: In fact, you can have a couple more.

REP. PANTZER: What is meant by issue? The intent, relative to the bill, was that this would be sold. We don't care if the securities are issued for mom and pop and the corporation. That doesn't even come under the bill. What we were after was unregistered securities, when the company sells these to the public. That's what we want records, accounts. Mom-and-pop corporations never came under this law. And just because you issued securities and distribute them among members of your family, or something like that, it still doesn't come under this law. No it does not.

MR. SAMUELS: I beg to differ.

REP. PANTZER: Well, Mr. Robitaille clearly understood that, from my conversations with him. This does not affect closely-held family corporations. It's only when securities are issued to the public. And I just think, I'm trying to determine whether you and I differ over the meaning of "issued," which I interpret to be -- you'd take to be printed, and I take to be offered for sale to the public.

MR. SAMUELS: I guess we do differ. But it's probably not an important difference. I would have no objection to using the term "sold" where I use the term "issued." If that's your concern.

This does apply to mom-and-pop corporations. I form them all the time, and I cannot get a certificate of incorporation from the Secretary of State without getting my

certification from Bob Robitaille. And both Bill Gardner and Bob Robitaille are quite correct in reading it that way. This applies to all corporations, the certificatior requirement does.

REP. PANTZER: No. "Certified" means "sold to the public."

MR. SAMUELS: No, the requirement that you get a certificate applies to all corporations.

REP. PANTZER: No. That you file a certificate as to the status of your corporations, if it issues securities. You would, in this case, exempt them.

MR. SAMUELS: In the case of mom-and-pop corporations.

REP. PANTZER: Generally, yes. So that this affects very few of the corporations in the state, but it should only those that are issuing securities to the public. And foreign corporations, of course, are covered by federal law. I mean, we don't even have to -- we're just reiterating a requirement of federal law, isn't this true?

MR. SAMUELS: Even --

REP. PANTZER: SEC law, covering foreign -- interstate commerce? A corporation in Massachusetts that's doing business here?

REP. PANTZER: What last year's bill did -- and this is getting a little bit afield from what I'm trying to do -- what last year's bill did doesn't affect registration of securities in any way. All it requires is a certificate that you're going to register them.

But as an example -- if I have the intention and the funds to form a corporation that I'll call General Motors, and I know I'm going to issue stock to people in 50 states. I'll have to go through a federal registration and have a prospectus. All I have to do, if I want to form a New Hampshire corporation, is file that same form that I've just given you, and say, "I'm going to register the securities." Doesn't affect -- and then I form the corporation. And I may issue, or sell, the security six months down the road, and I can choose to comply with the law that was always on the books that said you've got to register them in New Hampshire, as well as federally. Six months down the road. Or I can choose not to comply with it, and fail to register in New Hampshire. And that law was always on the books anyway, and this particular certification process, which goes to forming corporations, has had no effect on my registration or failure to register, or exemption, whether I break the law or not.

Not that I intend to break the law.

CHAIRMAN: I'm allowing this give-and-take here to sharpen up our minds on the securities.

MR. SAMUELS: If you'll excuse me -- I recognize that I'm.....

(End of tape -- unknown amount of testimony missing)

MR. SAMUELS: .....and this is on lines 23 through 25, on page 2.

Right now, foreign partnerships and foreign corporations -- let's stay with General Motors, a Delaware corporation, as an example. When they register to do business

in the state, they have to get the certificate from the Securities Division, bring it over to the Secretary of State, and get the license for authority to do business in the state. And right now, they've got to make the same statement that a domestic corporation does. And that statement includes a statement that, "My articles of incorporation state whether I will be selling securities within the meaning of RSA 421-B," the state of New Hampshire Securities Act. I can assure you that General Motors' articles of incorporation do not say that. Neither does IBM's. And neither do most corporations that are not domestic corporations. And I think that as a matter of policy, with respect to our relations with the 49 other states, we should not be requiring foreign corporations, foreign to New Hampshire, to change their articles of incorporation, their charter, to say something about compliance with New Hampshire law.

After all, other states don't. If all 49 states did that, we would have articles of incorporation from New Hampshire corporations that would be pages long, because they would have, "Article I, We will sell within the meaning of Delaware corporation law. Article II, We will sell within the meaning of Iowa's corporation law." Etc. The literal terms of the statute require that, before -- right now -- before General Motors can register to do business in the state of New Hampshire. I don't think that that should be the case, and that's lines 23 through 25. I understand, during my absence, Kit Morgan, from the Secretary of State's office, testified here. I've spoken to him specifically about that point, and they are in complete agreement.

CHAIRMAN: (Inaudible) and any further questions? If not, it's possible we're going to have to have a subcommittee on this, and (inaudible).

No further questions. We thank you for your testimony.

COMMITTEE ON COMMERCE, SMALL BUSINESS AND CONSUMER AFFAIRS

MEETING MINUTES ON HB 446

DATE: February 26, 1987

TIME: 11 AM

ROOM: 207 LOB

INTRODUCED BY: Rep. Reardon of Hillsborough Dist. 37

REFERRED TO: Commerce, Small Business and Consumer Affairs.

AN ACT relative to the registration of partnerships and corporations.

MEMBERS PRESENT: Baker, Buckley, Carpenito, Christy, Drolet, Foss, Keane, Krueger, Lindblade, Packard, Pantzer, Price, Provencal, Rodgers, Watson.

Rep. Judith Reardon of Hillsborough Dist. 37. Sponsors the bill. Bills filed last session required businesses to file with Insurance Commissioner and introduced it for a corporate lawyer, because of some of the requirements that need to be fine tuned. Bill has technical amends to previous legislation. Rep. Pantzer spoke to a S.B. that he and Sen. Geo. Disnard have sponsored that addresses part of this legislat

Christopher Morgan, Secretary of State's Office. Supports the bill. Corporate division--last years legislation caused confusion and this bill is a technical correction.

Hearing recessed at 11:10 to await arrival of Attorney Richard Samuels.
Hearing re-opened at 11:28.

Attnorney Richard Samuels. Last yr. committee considered 2 bills on legislation of foreign corporations & unlimited partnerships. Problems: 1) Presently Secretary of State needs Security Division's approval for articles of incorporation; 2) Registration of foreign partnerships needs security approval; 3) RSA 421:B--State Securities Act, Section XIII--certificate requirements--amended to certificates of authority. Present language a Catch 22--this bill says you file saying you have registered or will register--or you have exemption or will have exemption. Language which amends present statutue includes the future with the inclusion of the work "will". At present time, quarterly and annual reports must be filed with the Commissioner of Corporations. File annual reports with Secretary of State.

Rep. Pantzer asked which changes would be made?

Attorney Samuels. Does not wish to change substance of the presnet law. Feels that it needs the technical changes. The Secretary of State and Mr. Robitaille of the NH Insurance Dept/Securities Division see the problem.

SUB-COMMITTEE: Pantzer (CHR), Lindblade, Packard, Price

APPEARING IN FAVOR OF HB 446: Rep. Judith Reardon (Sponsor)
Hillsborough Dist. 37

Christopher Morgan
Secretary of State's Office

Attorney Richard Samuels
40 Stark St., Manchester, NH

IN OPPOSITION: None

Respectfully Submitted,

Lucille T. Wood

Lucille T. Wood
Clerk

LTW/dbg

ALL BUSINESS AND CONSUMER AFFAIRS 1987 SESSION

#446 acq. of partnership & corporations

s 2-26-87

ions 3-4-86

vor	Appeared in Opposition

		YEAS	NAYS	OTHER	ABSENT
Fraser, Leo W., Ch.					
Christy, C. Dana, V.C.					
Rodgers, G. Philip					
Burns, A. Leslie					
Wood, Lucille T.		✓			
Packard, Bonnie B.					
Foss, Patricia H.		✓			
Lindblade, Eric N.		✓			
Pantzer, Eugene E.		✓			
Townsend, Sara M.		✓			
Watson, Geraldine G.		✓			
Dionne, Paul R.		✓			
Drolet, Paul L.		✓			
Krueger, Richard H.		✓			
Gelinas, David L.					
Baker, George H.		✓			
Buckley, Raymond C.		✓			
Price, Dolores R.					
Carpenito, Michael H.		✓			
Provencal, Leo A.					
Keane, Cornelius J.		✓			

COMMITTEE REPORT:

OTPW A 13 yes 0 No

Consent

1040B
87-1006
07

HOUSE BILL NO. 4446

INTRODUCED BY: Rep. Reardon of Hillsborough Dist. 37

REFERRED TO: Commerce, Small Business and Consumer Affairs

AN ACT relative to the registration of partnerships and corporations.

ANALYSIS

This bill modifies the registration process for foreign limited partnerships and corporations. Such organizations must apply for certificates of authority, similar to that which must be obtained by a new domestic corporation, rather than apply for registration.

- -

EXPLANATION: Matter added appears in ***bold italics.***
Matter removed appears in [brackets].
Matter which is repealed and reenacted or all new appears in regular type.

421-B:13, I-a(b).

2 Application; Certificate of Authority. Amend RSA 305-A:1, V, to read as follows:

V. The secretary of state shall not accept [articles of incorporation] ***an application for a certificate of authority of a foreign limited partnership*** unless accompanied by the certification required by RSA 421-B:13, I-a(b).

3 Acceptance by Secretary of State; Requirements. Amend RSA 421-B:13, I-a, to read as follows:

I-a. Before the secretary of state may accept articles of incorporation for a new corporation under RSA 293-A, an application for a certificate of authority under RSA 293-A, a certificate of limited partnership for a new limited partnership under RSA 305, or an application for [registration of a foreign partnership] ***a certificate of authority of a foreign limited partnership*** under RSA 305-A, the following requirements shall be met:

(a) A statement [has] ***shall have*** been filed with the commissioner that the capital stock of the corporation or the interests of the limited partnership have been [either] registered, ***or when offered will be registered,*** under this chapter or [have been] ***are exempted, or when offered will be*** exempted [from registration], under this chapter[;], ***or are or will be offered in a transaction exempted from registration under this chapter;*** and, ***in the case of a New Hampshire corporation or limited partnership,*** that the articles of incorporation or ***certificate of*** limited partnership state whether the capital stock or

Section 5 Effective Date. This act shall take effect 60 days after its passage.

Commerce, Small Business and Consumer Affairs
March 3, 1987
1638B
07

Amendment to HB 446

Amend RSA 421-B:13, I-a, as inserted by section 3 of the bill by replacing it with the following:

I-a. Before the secretary of state may accept articles of incorporation for a new corporation under RSA 293-A, an application for a certificate of authority under RSA 293-A, a certificate of limited partnership for a new limited partnership under RSA 305, or an application for [registration of a foreign partnership] *a certificate of authority of a foreign limited partnership* under RSA 305-A, *or an amendment to any of the foregoing relating to the authorized capital of a corporation or to the identity of the limited partners,* the following requirements shall be met:

(a) A statement [has] *shall be* filed with the commissioner that the capital stock of the corporation or the interests of the limited partnership have been [either] registered, *or when offered will be registered,* under this chapter or [have been] *are exempted, or when offered will be* exempted [from registration], under this chapter[;], *or are or will be offered in a transaction exempted from registration under this chapter;* and, *in the case of a New Hampshire corporation or limited partnership,* that the articles of incorporation or *certificate of* limited partnership state whether the capital stock or interests in the limited partnership will be sold or offered for sale

within the meaning of this chapter. [If it is a new corporation, the statement shall be signed by the incorporators, and if it is a new limited partnership, the statement shall be signed by the intended general partner.] *The statement shall be signed by the incorporators of a corporation to be formed, by an executive officer of an existing corporation, or by the general partners or intended general partners if a limited partnership.*

(b) The commissioner [has certified] *shall certify* to the secretary of state that the requirements of subparagraph (a) have been met.

Amend the bill by replacing section 5 with the following:

5 Articles of Amendment; Certification by Secretary of State. Amend RSA 293-A:61 to read as follows:

293-A:61 Articles of Amendment.

I. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and shall set forth:

[I.]*(a)* The name of the corporation[;].

[II.]*(b)* The amendments so adopted[;].

[III.]*(c)* The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued[;].

[IV.]*(d)* The number of shares outstanding, and the number of shares entitled to vote, and if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares entitled to vote of each such class[;].

[V.]*(e)* The number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the amendment, respectively, or if no shares have been issued, a statement to that effect[;].

[VI.]*(f)* If the amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the exchange, reclassification or cancellation shall be effected is not set forth in the amendment, then a statement of the manner in which they shall be effected[; and].

[VII.]*(g)* If the amendment effects a change in the amount of stated capital, then a statement of the manner in which it is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the amendment.

II. The secretary of state shall not accept articles of amendment relating to the authorized capital of the corporation unless accompanied by the certification required by RSA 421-B:13, I-a(b).

6 Limited Partnerships; Amendment to Certificate. Amend RSA 305:26, V, to read as follows:

V. A certificate is amended or cancelled when there is file for record in the office of the secretary of state where the certificate is recorded (a) a writing in accordance with the provisions of paragraph I or II, or (b) a certified copy of the order of court in accordance with the provisions of paragraph IV. *The secretary of state shall not accept an amendment to the certificate relating to the identity of the limited partners, unless accompanied by the certification required by RSA 421-B:13, I-a(b).*

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

1638B

AMENDED ANALYSIS

This bill modifies the registration process for foreign limited partnerships and corporations. Such organizations must apply for certificates of authority, similar to that which must be obtained by a new domestic corporation, rather than apply for registration.

This bill, as amended, provides that the secretary of state shall not accept an amendment to any certificate of authority unless such amendment is accompanied by the certification required by RSA 421-B:13, I-a(b).