The Senate Committee on Interstate Cooperation

held its hearing in Conference Room State Library on Park Street

Bill No. Title:

HB 446 relative to the registration of partnerships and corporations

Members of committee present:

Senator White
Senator Stephen, ActingChairman
Senator Heath
Senator Nelson

Those appearing in favor:

Name and Address	Representing
SEE ATTACHED	

Those appearing in opposition:

Name and Address	Representing
SEE ATTACHED	

Report of Committee:

Ought to pass		Interim Study	
Ought to pass w/amendment	XX	Continued Hearing	
Inexpedient to legislate		Postponed Hearing	

I N T E R S T A T E C O O P E R A T I O N

HEARING NOTES

DATE: May 29, 1987

TIME: 2:15 p.m.

The Senate Committee INterstate Cooperation held a hearing in the Conference Room of the New Hamsphire State Library because of a fire in the Legislative Office Building that Monday. The hearing was on:

HB 446 relative to the registration of partnerships and corporations

COMMITTEE MEMBERS PRESENT

Senator White, Chairperson
Senator Stephen, Acting Chairperson
Senator Heath
Senator Nelson

Chr. Stephen: First of all we will have HB 446. I will call on the sponsor, Rep. Reardon.

Rep. Reardon: HB 446 is very dry bill that is difficult to read. Its purpose is quite simple and necessary. When HB 446 does ismake certain technic corrections to previous legislation that we passed last year. There are certain problems with the literal applications of the securities legislation that we passed last year. I will give you one example. Under the current law, we are now requiring a business entity to make a filing which says that its securities are registered, and they have to do that before they are going to be issued a certificate of from the Securities Division. Then they need that certificate to incorporate at the Secretary of States's Office. The problem is that incorporations can't issue secrities until it's incorporated. Se, that the way the legislation was written last year, was to set up a Catch -22 situation where it's impossible for the Secretary of State's Office or the Securities Division to really comply with the way the law is written. What we are trying to so with House Bill 446 is to make a few technical changes that won't change the purpose of last year's legislation, but will simply make it possible for the Secretary of State's Office Securities Division to actually follow the law.
I am not a corporate lawyer, and I am not an expert on these matters. I would be happy to try and answer your questions, but they may be answered more simply by Richard Samuels who drafted the legislation.

Chr. Stehpen: This is similar to the bill that we had last year?

Rep. Reardon: It is not similar to it. This bill 446 makes some technical corrections in that bill.

Hearing HB 446:

REp. Pantzer: Mr.Chairman, Membersof the Committee. My remarks will be brief. Last year Chapter 131 was enacted requiring coocoordinate reporting as to the securities issuing status of the coporations and limited partnerships --between the securities department and the Secretary of State. Both of these have overlaping jurisdicitons and Chapter 131 insured that if company X planned to issue securites sold to the public that information would be on record both at at insurance and state. Rep. Reardon's bill makes the original terminology more exact a also, I think that it is important to note that it simplifies the paper work when the changes are insubstantial rather than major. The original sponsors heard this bill in the Commerce Committee and examined it further in subcommittee and accepted all the changes that were proposed thinking that they were constructive.

C. Morgan: My name is Christopher Morgan, and I am Director of the Corporations Division in the Secretary of State's Office. I have a couple of amendments that I will pass out.

SEE ATTACHED !

First of all,we found that there was some confusion when this original legislation was passed last year. I think that this bill will help by clearing up some of the language.

The amendment that refers to the broker-dealer (Morgan #1A) amending RAS-BB:9, I am giving to you at the request of the Insurance Department. they were here and David Kearns said that he will be back.

the other amendment from our office (MOrgan #1) deals with corporate seals and fees that we charge for the certificates and also the trade name.

RSA 5:5 allows the Secretary of State to use a printed seal for certificates to be issued. We issue about 20,000 certificates that go back with corporate papers. Each of these are handsealed and stamped. The idea is that the change will more efficient and less time consuming. The printed seal will not have a pre-printed signature on it.

The second amendment--points 2 & 3 are together and have to do with raising the fee for certificates from $1 to $5. The other New England States are all $5. The work load in our office has been increasing, in part to the legislation that was passed last year.

Poonts 4 & 5 of the amendment simply remove the requirement that when you register a trade name or add someone or withdraw someone from your partnership the application has to be notarized. We want to remove that because none of our other forms require it.

Sen. Heath: Doesn't point I offend your sense of finesse?

C. MOrgan: I think that we are losingmoney on it now.

Proposed amendment to HB 446

1. Amend RSA 5:5 to add the following new sentence:

The secretary may employ a printed or stamped facsimile seal, which shall have the same legal effect as the impression of the seal.

No Do

2. Amend RSA 5:10 to read:

5:10 Office Fees. Except as otherwise provided, the following fees shall be paid to the secretary of state for the use of the state: For every commission issued to a justice of the peace or a notary public, $30; for every certificate pertaining to the existence of a corporation, trade name, or other business entity, or writ served on the same, $5; for every such certificate in 'long form,' $10; for every other certificate under seal of the state, $1; for engrossing private acts, $1 for each page of 240 words.

Do This

(new wording underlined)

3. Amend RSA 293-A:135 I to change "$1 for the certificate" to "$5 for the certificate."

Do This

4. Amend RSA 349:2 to delete the words "and sworn to" in three places.

5. Amend RSA 349:5 to delete the words "and sworn to."

Do This

Hearing HB 446:

C. Morgan: I think that we can make one like this attractive.

Sen. Nelson: On proposed amendment 446 is that---you are just amending on to the bill, not changing it in lieu of anything.

R. Samuels: I am the one who is responsible for this bill. I apologize for that. I have some printed material to simplify an explanation of what I am trying to do. SEE ATTACHED #2

Rep. Reardon tried to point out that all this bill intended to do was to correct some technical points and language problems that are related to an enactment Chapter 131 and 115 of 1986 law.

He reviewed each problem and soluton on the handout.

Sen. Heath: Are any of these 3 changes that you have suggested so far do anything tc improve the real world?

C. Samuels: They are a different way of moving paper. As a corporate practioner, it upsets me to have a law whose literal terms can not be complied with.

SEn. Heath: Could we have accomplished making the law consistent with practice by eliminating the pratice wherever possible and slowing down the paper flow if it is not accomplishing anything?

C. Samuels: In my opinion, no. On the other hand, this isn't going to do anything to improve the world.

The amendment that was added in the House committee to this section really is language that would follow--language that would be inserted at line 15 pg. 2.

Reads from handout.

Sen. Heath: Referring to #5
Isn't the reverse of that , isn't it true that without that statement of solution section, that New Hamsphire wants to conform? (difficult tc understand) If it won't affect it one way, how do you know it won't the other?

C. Samuels Well, all the statement says is let's say I am a corporation--I am telling you that I am going to offer my securities within the meaning of RSA 421-B. At the very miost that statement is justa statement of my recognition that the state's securities law applies to me. If I don't recognize or on behalf of my client that doesn't mean that it doesn't apply. that means that I am a poor lawyer or haven't obtained a lawyer that understands it. My statemtn to the affect whether it applies or not doesn't have any effect upon the enforcibility of the law.

Sen. Heath: wo7ldn't striking that entire statement so that we weren't separating New Hamsphire from foreign corporations, wouldn't that leave the implication that the foreign corporations did in fact come subject to state securities laws even if we didn't mandade it as law?

HOUSE BILL 446

Prepared Testimony of Richard A. Samuels

PURPOSES OF HOUSE BILL 446

The purpose of the bill is to remedy 7 problems created by 1986 Laws, Chapters 131 (relative to certifications by the Securities Division to the Secretary of State) and 115 (relative to financial reporting to the Securities Division).

Problems 1, 2, 3, 4, 6 and 7 each pertain to aspects of the law the literal terms of which cannot be complied with.

Problem 1: Presently, the Secretary of State may not accept articles of incorporation from foreign entities seeking to register in the state without the certification of the Securities Division. However, articles of incorporation are not filed with the Secretary of State.

Solution: Amend the foreign registration section (293-A:107) to require the filing of the certification with applications for certificates of authority. (Section 1 of HB 446)

Problem 2: The Secretary of State may not accept articles of

of incorporation from foreign limited partnerships seeking to register in the state without the certification of the Securities Division. However, limited partnerships do not have articles of incorporations.

Solution: Amend the registration of foreign partnerships section (305-A:1 V) to require the filing of the certification with applications for certificate of authority. (Section 2 of HB 446)

Problem 3: In order to obtain a certificate from the Securities Division, a statement must be made that the securities of the entity have been registered or exempted. However, entities cannot, by definition and by law, sell securities until after their formation, and registration or exemption of the securities necessarily follows formation of the entity. Further, under the state securities act, exemption may follow from the nature of the securities themselves or from the nature of the transaction in which they are offered.

Solution: Amend the certification requirements (421-B 13 Ia) to enable a person to state that the securities will be registered or exempted or offered in a transaction that is exempted. (Section 3, lines 19-23, of HB 446)

Problem 4: Certification by the Securities Division requires

a statement that the articles of incorporation or limited partnership state that the securities will be sold or offered for sale within the meaning of the New Hampshire Securities Act. However, limited partnerships do not have articles of incorporation.

Solution: Specify that the statement applies to certificates of limited partnership. (Section 3, line 25, HB 446)

Problem 5: Foreign corporations and limited partnerships must file the same statement as domestic entities, including the statement that the articles or limited partnership documents state that the securities will be sold or offered for sale within the meaning of New Hampshire Securities Act. It is unreasonable to require foreign corporations or limited partnerships to state that their domestic charter documents contain a statement with respect to New Hampshire Securities Law.

TAKE OUT

Solution: Require that the charter documents of only domestic entities contain a statement with respect to New Hampshire laws.

Problem 6: The statement must be signed by incorporators of a new corporation and the intended general partner

of a new limited partnership. However, existing foreign entities must also file the statements to register to do business.

Solution: Expand the signature provision to specify which representatives of existing entities must sign the statement. (Section 3, p.3, lines 5-8, HB 446)

Problem 7: The Secretary of State cannot accept annual reports of corporations or limited partnerships which have registered securities unless it has filed its annual financial statement with the Securities Division. However, limited partnerships do not file annual reports.

Solution: Limit the prohibition on accepting annual reports to the only entities that file them, corporations. (Section 4 of HB 446)

Hearing HB 446:

C. Samuels: Are you suggesting that just to eliminate that certification entirely?
Personally, I don't think that we have lost anything, but my intention is to tamper with the law as little as possible and since that certification is in ther for domestic corporations and since it is not as reasonable to require to doemestic corporations for whatever purpose to make that statement, I don't have an objection.

Sen. Heath: Has there been a civil or criminal case in recent years?

C. Samuels: I can't say for sure. This has been in effect only since JUly 1986.

Sen. Heath: the predecessor didn't exist. We lived without it for many years.

C. Samuels: It doesn't hurt with respec to domestic entities; with respect to foreign entities, I think.....

C. Samuels: I think that we are running late. I will say that my identifications of #6 & 7 can stand on their own. They are simple ones that pertains to the filing of annual reports. It is a different section of the 198(laws. Section 115.

I noted before that the House committee added amendments to this bill and those amendments would affect the requirements of getting a certificate.

Finally, I have no problem with any of the amendments that have been introduced by Mr. Morgan. the only ocmment that I have on the bill as it stands is that the official House record has a typographical error in it. The file should be passed tense: filed.

Sen. Nelson: I have been looking for #5.

C. Samuels: #5 is line 23 running on to line 24 on page #2. That language " in the case of..." that has the effect of restricitng that particular certification--New Hamsphire entities. Right now that restriction is not in there.

Sen. Nelson: #6 is part on page 3 line where it talks about the signatures "the statemtn shall be signed by the incorporators.

page 3 line 5-8

The only substantive change, you said was # 5. (yes)

D. Kearns: Thank you, Mr. Chairman. for the record, my name is David Kearns, and I am the Assistant INsurance Commissioner. I appear before you today on HB 446. Basically, to support the bill as it was amended in the House. I would be willing to answer any questions that you would have on that , and I would like the committee to consider an additional amendment which Mr. Morgan passed out.

SEE ATTACHED #1A: Morgan/Kearns

This proposed has to do with the examination fees charged by the examiners of the insurance division when they look at the broker-

AMEND RSA 421-B:9 (VII) to read as follows:

VII. The broker-dealer or other person examined pursuant to this section shall bear the expense of the examination. Such expense shall be limited to a reasonable per diem allowance for compensation and expenses as determined by the commissioner. ~~Provided, however, that if upon examination of any person specified in subparagraph II (a) of this section the commissioner shall determine that such person is not in violation of the provisions of Title XXXVIII or applicable rules, the expense of the examination shall be borne by the department.~~

Hearing HB 446:

D. Kearns: dealers doing business with the state. What we would like to have done is have this amendment adopted so that the law will conform with what our practice has been. We ha ve financial examiners who go in and examine broker-dealers and issuer-dealers who do business in the state. When the securities laws were amended to include the examinations provisions, they borrowed heavily from our insurance statutes for wroding and format. Under the insurance statute, we are mandated to examine insurance companies on a regular periodic basis. When we do this , the cost of those examiners are charged directly to the company. Insurance agancies --who are mostly the smaller business men and women out in the community selling the insurance rather than the companies who are issuing the policies-- we do not examine on a regular basis. The law there has given us the ability to examine them when there is a problem when there are complaints and fast action is needed. The law provides that the cost will only be passed along for violations of the law. UNfortunately in the transfer over to the securities area, they took the examination provision that were aKin to the agent rather than to the company. In the broker-dealer area, we have mandated examinations. We feel that it is more fair to have the insurance company language rather than the insurance agent language. When this initially went through this did not cause much of a problem because we didn't have any examiners. In the last biennial budget, we had two examiners.

Sen. Nelson: In terms of education for me, you said that you have financial examiners or auditorsgo in and chaeck brokers or issuer dealers? (Yes) I just want to know quickly what is a broker?

D. Kearns: this in the seurities area. The securities is under the umbrella of the insurance department. There is some interplay there, but they are largely separated.

Sen. Nelson: I want to make sure that I understood you correctly. You said, "you passed the cost along for the examination for violations." Did I hear that correctly.

D. kearns' The current law states that we have to find a violation before we can charge.

Sen. Nelson: Will this allow you to charge you costs withour any violations?

D. Kearns: Yes, that is correct. Because we are mandated to examine every domestic broker-dealer every two years.

Sen. Nelson: This is brand new; this is a major change in the laws?

D. Kearns: No, it is not because we are currently charging everyone.

Sen. Nelson: If you are already charging the costs, so where does this cost for violation come in?

Hearing HB 446:

D. Kearns: We are currently charging and the Attorney General's Office said that since we are doing it it should be written in the law.

One other point that I might add, is that it does not change the dollars one way or the other.

Chr. Stephen: Is ther anyone else who wants to speak for or against on HB 446?

Sen. Nelson: Mr. Kearns, have you seen the amendments that Mr. Samuels has brought forward?

D. Kearns: I did not understand that Mr. Samuels had proposed new amendments. He spoke to the bill as amended by the House.

Rep. Pantzer: I would like to share that Rep. Lindblade could not come because of the storm.

Chr. Stephen: Is there now anyone else who wishes to speak. I declare then the hearing closed.

Hearing Closed

2:55 p.m.

COMMITTEE HEARING ON HB446

Date 4/29 Place State Library

NAME: Rep Judy Rennick

Business Address:

City: Phone:

REPRESENTING: Hills 37

WISH TO SPEAK: YES ✓ NO Time Needed: 2 mins

Supporting Bill: ✓ Opposing Bill:

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON HB 446

Date 4-29 Place Library

NAME: Christopher Mo[illegible]

Business Address: Corporations Divisi

City: Phone: 3-4

REPRESENTING:

WISH TO SPEAK: YES ✓ NO Time Needed: 5 m

Supporting Bill: X with amendment Opposing Bill:

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH CC CLERK

COMMITTEE HEARING ON HB 446

Date 4/29 Place State Lib Mtg Rm

NAME: Repn Eugene PANETZER

Business Address: MERR 11

City: Phone:

REPRESENTING:

WISH TO SPEAK: YES X NO Time Needed:

Supporting Bill: X Opposing Bill:

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH COMMITTEE CLERK

COMMITTEE HEARING ON HB 446

Date 4/29 Place

NAME: Richard Samuels

Business Address: 40 State St

City: Mmch Phone:

REPRESENTING: self

WISH TO SPEAK: YES ✓ NO Time Needed: 10-1

Supporting Bill: ✓ Opposing Bill:

PLEASE LEAVE COPY OF ANY PREPARED STATEMENT WITH C CLERK