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HOUSE BILL 401

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Rob Burpo

AN ACT

RELATING TO SECURITIES; AMENDING A SECTION OF THE NEW MEXICO
SECURITIES ACT OF 1986 TO REDUCE THE FILING FEE FOR CERTAIN
REGISTRATION STATEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-13B-24 NMSA 1978 (being Laws 1986,
Chapter 7, Section 24, as amended) is amended to read:

"58-13B-24. PROVISIONS APPLICABLE TO REGISTRATION
GENERALLY. --

A. A registration statement may be filed by the
issuer, any other person on whose behalf the offering is to be
made or a registered broker-dealer.

B. If a registration statement is withdrawn before
the effective date or a pre-effective stop order is entered
pursuant to Section 58-13B-25 NMSA 1978, the director shall

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1 retain the fee set forth in this subsection. A person filing
2 a registration statement shall pay a filing fee of:

3 (1) one-tenth of one percent of the maximum
4 aggregate offering price at which the registered securities
5 are to be offered in New Mexico, but not less than five
6 hundred twenty-five dollars (\$525) or more than two thousand
7 five hundred dollars (\$2,500); or

8 (2) [~~five hundred twenty-five dollars (\$525)~~]
9 three hundred fifty dollars (\$350) if the person is a
10 corporate issuer or a person acting on behalf of a corporate
11 issuer and is claiming an exemption from the registration
12 requirements of federal law regarding small corporate
13 offerings pursuant to Rule 504 of Regulation D (17 CFR
14 230.504).

15 C. A registration statement must specify the
16 amount of securities to be offered in New Mexico and:

17 (1) the states in which a registration
18 statement or similar document in connection with the offering
19 has been or is to be filed; and

20 (2) any adverse order, judgment or decree
21 entered by the securities agency or administrator in any state
22 or by a court or the securities and exchange commission in
23 connection with the offering.

24 D. A document filed pursuant to the New Mexico
25 Securities Act of 1986 or a predecessor act, within five years

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1 before the filing of a registration statement, may be
2 incorporated by reference in the registration statement if the
3 document is currently accurate.

4 E. The director by rule or order may permit the
5 omission of an item of information or document from a
6 registration statement.

7 F. In the case of a non-issuer offering, the
8 director may not require information pursuant to Section
9 58-13B-23 NMSA 1978 or Subsection L of this section unless it
10 is known to the person filing the registration statement or to
11 the persons on whose behalf the offering is to be made, or can
12 be furnished by them without unreasonable effort or expense.

13 G. In the case of a registration pursuant to
14 Section 58-13B-22 or 58-13B-23 NMSA 1978 by an issuer who has
15 no public market for its shares and no significant earnings
16 from continuing operations during the last five years or any
17 shorter period of its existence, the director by rule or order
18 may require as a condition of registration that the following
19 securities be deposited in escrow for not more than three
20 years:

21 (1) a security issued to a promoter, control
22 person or affiliate within the three years immediately before
23 the offering or to be issued to such persons for a
24 consideration substantially less than the offering price; and

25 (2) a security issued to a promoter, control

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1 person or affiliate for a consideration other than cash,
2 unless the registrant demonstrates that the value of the
3 noncash consideration received in exchange for the security is
4 substantially equal to the offering price for the security.

5 The director by rule or order may determine the
6 conditions of an escrow required pursuant to this subsection,
7 but the director may not reject a depository solely because of
8 location in another state.

9 H. The director by rule or order may require as a
10 condition of registration pursuant to Section 58-13B-22 or
11 58-13B-23 NMSA 1978 that the proceeds from the sale of the
12 registered security in New Mexico be impounded until the
13 issuer receives a specified amount from the sale of the
14 security. The director by rule or order may determine the
15 conditions of an impoundment arrangement required pursuant to
16 this subsection, but the director may not reject a depository
17 solely because of its location in another state.

18 I. If a security is registered pursuant to Section
19 58-13B-21 or 58-13B-22 NMSA 1978, the prospectus filed
20 pursuant to the federal Securities Act of 1933 shall be
21 delivered to each purchaser in accordance with the prospectus
22 delivery requirements of the federal Securities Act of 1933.
23 With respect to a security registered pursuant to Section
24 58-13B-21 or 58-13B-22 NMSA 1978, the director by rule or
25 order may require the delivery of other material documents or

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1 information to each purchaser concurrent with or prior to the
2 delivery of the prospectus.

3 J. If a security is registered pursuant to Section
4 58-13B-23 NMSA 1978, an offering document containing
5 information the director by rule or order designates shall be
6 delivered to each purchaser with or before the earliest of:

7 (1) the first written offer made to the
8 purchaser by or for the account of the issuer or another
9 person on whose behalf the offering is being made or by an
10 underwriter or broker-dealer who is offering part of an unsold
11 allotment or subscription taken by it as a participant in the
12 distribution;

13 (2) confirmation of a sale made by or for the
14 account of a person named in Paragraph (1) of this subsection;

15 (3) payment pursuant to a sale; or

16 (4) delivery pursuant to a sale.

17 K. A registration statement remains effective for
18 one year after its effective date unless the director by rule
19 or order extends the period of effectiveness. All outstanding
20 securities of the same class as a registered security are
21 considered to be registered for the purpose of a non-issuer
22 transaction while the registration statement is effective,
23 unless the director by rule or order provides otherwise. A
24 registration statement may not be withdrawn after its
25 effective date if any of the securities registered have been

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1 sold in New Mexico, unless the director by rule or order
2 provides otherwise. No registration statement is effective
3 while a stop order is in effect pursuant to Subsection A of
4 Section 58-13B-25 NMSA 1978.

5 L. During the period that an offering is being
6 made pursuant to an effective registration statement, the
7 director by rule or order may require the person who filed the
8 registration statement to file reports, not more often than
9 quarterly, to keep reasonably current the information
10 contained in the registration statement and to disclose the
11 progress of the offering.

12 M. A registration statement filed pursuant to
13 Section 58-13B-21 or 58-13B-22 NMSA 1978 may be amended after
14 its effective date to increase the securities specified to be
15 offered and sold. The amendment becomes effective upon filing
16 of the amendment and payment of an additional filing fee,
17 which shall be three times the fee otherwise payable,
18 calculated in the manner specified in Subsection B of this
19 section, with respect to the additional securities to be
20 offered and sold. The effectiveness of the amendment relates
21 back to the [date or] dates of sale of the additional
22 securities being registered.

23 N. A registration statement filed pursuant to
24 Section 58-13B-23 NMSA 1978 may be amended after its effective
25 date to increase the securities specified to be offered and

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1 sold, provided that the public offering price and
2 underwriters' discounts and commissions are not changed from
3 the respective amounts of which the director was informed.
4 The amendment becomes effective when the director so orders
5 and relates back to the date of sale of the additional
6 securities being registered. A person filing an amendment
7 shall pay an additional filing fee, which shall be three times
8 the fee otherwise payable, calculated in the manner specified
9 in Subsection B of this section, with respect to the
10 additional securities to be offered and sold.

11 0. Pursuant to Section 106(c) of the federal
12 Secondary Mortgage Market Enhancement Act of 1984, any
13 securities that are offered and sold pursuant to Section 4(5)
14 of the federal Securities Act of 1933 or that are mortgage-
15 related securities, as that term is defined in Section
16 3(a)(41) of the federal Securities Exchange Act of 1934, being
17 15 U.S.C. 78c(a)(41), are required to comply with all
18 applicable registration and qualification requirements of the
19 New Mexico Securities Act of 1986 and the rules pursuant to
20 that act and shall not be treated as obligations issued by the
21 United States for purposes of that act.

22 P. With respect to a federal covered security, as
23 defined in Section 18(b)(2) of the federal Securities Act of
24 [1993] 1933:

25 (1) prior to the offer of the security in New

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1 Mexico, the following shall be filed by or on behalf of the
2 issuer:

3 (a) a notice of intent to sell the
4 security that provides: 1) the name and address of the
5 issuer; 2) a description of the securities to be offered; 3)
6 the name, address and telephone number of an authorized
7 contact person; and 4) other information that the director
8 may, by rule or by order, require;

9 (b) a consent to service of process;
10 and

11 (c) a notification fee in the amount of
12 five hundred twenty-five dollars (\$525); and

13 (2) the notice of intent and fee specified in
14 Paragraph (1) of this subsection shall be effective for a
15 period of one year from the date of filing with the director.

16 Q. With respect to any security that is a federal
17 covered security pursuant to Section 18(b)(4)(D) of the
18 federal Securities Act of 1933, the director, by rule or by
19 order, may require the issuer to file, no later than fifteen
20 days after the first sale of the federal covered security in
21 New Mexico, a notice containing the information required by
22 SEC Form D and a consent to service of process signed by the
23 issuer, together with a notification fee in the amount of
24 three hundred fifty dollars (\$350).

25 R. The director, by rule or by order, may require

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1 the filing of any document filed with the United States
2 securities and exchange commission pursuant to the federal
3 Securities Act of 1933 with respect to a federal covered
4 security pursuant to Section 18(b)(3) or (4) of the federal
5 Securities Act of 1933, together with a fee to be determined
6 by the director.

7 S. The director may issue a stop order suspending
8 the offer and sale of a federal covered security, except a
9 federal covered security pursuant to Section 18(b)(1) of the
10 federal Securities Act of 1933, if he finds that:

- 11 (1) the order is in the public interest; and
 - 12 (2) there is a failure to comply with any
- 13 condition established pursuant to this section.

14 T. The director, by rule or otherwise, may waive
15 any or all of the provisions of this section. "

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 20, 1999
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8 Mr. Speaker:
9

10 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to
11 whom has been referred
12

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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 APPROPRIATIONS AND FINANCE COMMITTEE.

18 Respectfully submitted,
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22 _____
23 James G. Taylor, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Abeyta

Absent: None

J: \99BillSWP\h0401

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