



## **Representative Lindsey Holmes**

### **Sectional Summary**

## **HB 57 – Entity Transactions Act**

Here a sectional summary of HB 57, the Entity Transactions Act prepared by my office. Please keep in mind that this summary is for informational purposes and the bill itself is the most authoritative interpretation of its contents.

In this sectional summary, "new chapter" or "chapter" means the Alaska Entity Transactions Act to be numbered AS 10.55, and "department" means the Department of Commerce, Community, and Economic Development. Please be aware that many terms in the new chapter are defined at the end of the new chapter.

**Section 1.** Conforming change (AS 06.26.670 repealed).

**Section 2.** Adds two sections to the article on organic change in AS 10.06, the for-profit corporations chapter. Sec. 10.06.595 allows, with exceptions, corporations to enter into mergers, interest exchanges, conversions, or domestications under the new chapter (the Alaska Entity Transactions Act). States that specific provisions do not apply to certain transactions covered by the new chapter. Sec. 10.06.600 defines terms for the article to conform to the application of the new chapter.

**Section 3.** Conforming and editorial change (AS 10.15.450 repealed).

**Section 4.** Adds AS 10.20.285 as a new section in the nonprofit corporations chapter to state that a corporation may, under the new chapter, enter into mergers, interest exchanges, conversions, and domestications that are not covered by certain sections of the nonprofit corporations chapter.

**Section 5.** Adds AS 10.30.058 as a new section in the chapter on cemetery organizations to state that cemetery associations and nonprofit cemetery corporations may enter into mergers, interest exchanges, conversions, and domestications under the new chapter.

**Section 6.** Adds a new section to the chapter on religious corporations (AS 10.40) to state that a corporation formed under AS 10.40 may enter into mergers, interest exchanges, conversions, and domestications under the new chapter.

**Section 7.** Amends AS 10.45.240, a section of the professional corporations chapter, to state that the provision in the state's for-profit corporations code relating to entering into mergers, interest exchanges, conversions, and domestications under the new chapter applies to professional corporations.

**Section 8.** Adds a new section to the limited liability company chapter to state that a limited liability company may, under the new chapter, enter into mergers, interest exchanges, conversions, and domestications that are not covered by certain sections of the limited liability company chapter.

**Section 9.** Conforming change (AS 10.50.570 has been repealed).

**Section 10.** Adds definitions to AS 10.50, the chapter on limited liability companies, conforming to the application of the new chapter.

**Section 11.** Adds the new chapter containing the Alaska Entity Transactions Act.

**Sec. 10.55.103.** Indicates how the new chapter relates to other laws, including principles of law and equity.

**Sec. 10.55.104.** Requires entities to satisfy certain governmental notice or approval requirements for mergers when involved in an interest exchange, conversion, or domestication. Addresses the diversion of property held for charitable purposes.

**Sec. 10.55.105.** Includes a filing under the chapter in an entity's public record.

**Sec. 10.55.106.** Provides that achieving a result under the new chapter does not prevent achieving the same result under another law.

**Sec. 10.55.107.** Allows a transaction plan (under certain conditions) to refer to facts that can be found outside the plan, even if the facts are not within the control of a party to the transaction.

**Sec. 10.55.108.** States that approval of a transaction by the unanimous vote or consent of an entity's interest holders satisfies the chapter's transaction approval requirements, unless, for a domestic entity, the organic law or organic rules state otherwise.

**Sec. 10.55.109.** Addresses when dissenters' rights are available to an interest holder. As a default provision, states that the interest holder may use the procedures under AS 10.06.576.

- Sec. 10.55.110. Lists the entities that may not take part in a transaction under the chapter. Includes, among others, financial institutions and insurers.
- Sec. 10.55.120. Requires that the name that a domestic entity takes under this chapter comply with certain requirements.
- Sec. 10.55.201. Provides the general authorization for mergers. Lists certain excluded transactions.
- Sec. 10.55.202. States that a domestic entity may become a party to a merger by approving a plan of merger. States what the plan must contain and allows it to contain any other provision not prohibited by law.
- Sec. 10.55.203. States that a plan of merger is not effective unless it has been approved. Describes what approval is required.
- Sec. 10.55.204. Describes how a plan merger for a domestic merging entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of merger has become effective or been filed.
- Sec. 10.55.205. Requires a statement of merger to be signed and filed with the department. Identifies what the statement of merger must contain and allows it to contain any other provision not prohibited by law. Requires, if a domestic entity is the surviving entity, that the surviving entity's public organic document satisfy this state's requirements, with certain exceptions. Allows a signed plan of merger with the required contents to be filed with the department instead of a statement of merger and to have the same effect as a statement of merger. States when the statement of merger becomes effective.
- Sec. 10.55.206. Lists the effects of a merger on the entities involved. States, with exceptions, that a merger does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability when a merger becomes effective. For foreign entities that are the surviving entities, allows for service of process on the entity regarding liabilities and provides for appointment of the department as the entity's agent for the service of process. When a merger becomes effective, cancels the foreign qualification of a foreign merging entity that is not the surviving entity.

- Sec. 10.55.301. Provides the general authorization for a domestic or foreign entity to acquire the interests of other entities or for its interests to be acquired by other entities. Conditions the foreign entity's authorization on the authorization of the foreign entity's jurisdiction or organization. Provides a special interest exchange rule for certain protected agreements that have domestic entity merger provisions but no interest exchange provisions. Excludes certain share exchanges under AS 10.06 (the for-profit corporations code).
- Sec. 10.55.302. States that a domestic entity may be an acquired entity in an interest exchange by approving an interest exchange plan. States what the plan must contain and allows it to contain any other provision not prohibited by law.
- Sec. 10.55.303. States that a plan of interest exchange is not effective unless it has been approved. Describes what approval is required.
- Sec. 10.55.304. Describes how an interest exchange plan for a domestic acquired entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of interest exchange has become effective or been filed.
- Sec. 10.55.305. Requires a statement of interest exchange to be signed and filed with the department. Identifies what the statement of interest exchange must contain and allows it to contain any other provision not prohibited by law. Allows, for a domestic acquired entity, a signed plan of interest exchange with the required contents to be filed with the department instead of a statement of interest exchange and to have the same effect as a statement of interest exchange. States when the statement of interest exchange becomes effective.
- Sec. 10.55.306. Lists the effects of an interest exchange on the entities involved. States, with exceptions, that an interest exchange does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability.
- Sec. 10.55.401. Provides the general authorization for conversion of domestic and foreign entities. Conditions the conversion authorization of foreign entities to the law of the foreign jurisdiction. Provides a special rule for certain protected agreements that have domestic entity merger provisions but no conversion provisions.

- Sec. 10.55.402. States that a domestic entity may convert to a different type of entity by approving a plan of conversion. States what the plan must contain and allows it to contain any other provision not prohibited by law.
- Sec. 10.55.403. States that a plan of conversion is not effective unless it has been approved. Describes what approval is required.
- Sec. 10.55.404. Describes how a plan of conversion may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of conversion has become effective or been filed. Indicates what the statement of abandonment must contain when done after a statement of conversion is filed but the filing is not yet effective.
- Sec. 10.55.405. Requires a statement of conversion to be signed and filed with the department. Identifies what the statement of conversion must contain and allows it to contain any other provision not prohibited by law. Requires, if the converted entity is a domestic entity, the entity's public organic document to satisfy this state's requirements, with certain exceptions. Allows, for a domestic converting entity, a signed plan of conversion with the required contents to be filed with the department instead of a statement of conversion and to have the same effect as a statement of conversion. States when a statement of conversion becomes effective.
- Sec. 10.55.406. Lists the effects of a conversion on the entities involved. States, with exceptions, that a conversion does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability. Provides that a foreign entity that is the converted entity may be served with process in this state regarding liabilities and appoints the commissioner as the agent to receive the process. Provides that the foreign qualification of a converting entity that is a qualified foreign entity is cancelled when the conversion becomes effective. Provides that a conversion does not require an entity to wind up its affairs and does not constitute or cause a dissolution of the entity.
- Sec. 10.55.501. Provides the general authorization for a domestic entity to become a foreign entity of the same type, if the law of the foreign jurisdiction authorizes the domestication. Provides the general authorization for a foreign entity to become a domestic entity of the same type in this state, if the law of the foreign jurisdiction authorizes the domestication. Provides a special rule for certain protected agreements that have merger provisions relating to domestic entities but no domestication provisions.

Sec. 10.55.502. States that a domestic entity may become a foreign entity in a domestication by approving a plan of domestication. States what the plan must contain and allows it to contain any other provision not prohibited by law.

Sec. 10.55.503. States that a plan of domestication is not effective unless it has been approved. Describes what approval is required.

Sec. 10.55.504. Describes how a plan of domestication of a domestic entity may be amended. Allows the plan to be abandoned and states how this may be done, depending on whether the statement of conversion has become effective or been filed. Indicates what the statement of abandonment must contain after the statement of conversion has been filed.

Sec. 10.55.505. Requires a statement of domestication to be signed and filed with the department. Identifies what the statement of domestication must contain and allows it to contain any other provision not prohibited by law. Requires, if the domesticated entity is a domestic entity, the entity's public organic document to satisfy this state's requirements, with certain exceptions. Allows, for a domestic domesticating entity, a signed plan of domestication with the required contents to be filed with the department instead of a statement of domestication and to have the same effect as a statement of domestication. States when a statement of domestication becomes effective.

Sec. 10.55.506. Lists the effects of a domestication for the entities involved. States, with exceptions, that a domestication does not give the rights that an interest holder, governor, or third party would otherwise have when there is a dissolution, liquidation, or winding up. Addresses interest holder liability. Provides that a foreign entity that is the domesticated entity may be served with process in this state regarding liabilities and appoints the commissioner as the agent to receive process. Provides that the foreign qualification of a domesticating entity that is a qualified foreign entity is cancelled upon domestication. Provides that a domestication does not require an entity to wind up its affairs and does not constitute or cause a dissolution.

Sec. 10.55.601. States the requirements for a document to meet in order to be entitled to be filed by the department under this chapter. Requires payment, or arrangement for payment, of the filing fee and any other required tax, license fee, or penalty.

- Sec. 10.55.602. Allows the department to establish and furnish non-mandatory forms for the documents filed under this chapter.
- Sec. 10.55.603. Directs the department to collect fees for being served with process, for copying documents, for certifying documents, and for filing documents under this chapter. Directs the department to establish the amount of the fees by regulation.
- Sec. 10.55.604. Establishes when a document accepted for filing becomes effective.
- Sec. 10.55.605. Allows an entity to correct a filed document under certain circumstances. Indicates how to make the correction. States when the correction is effective.
- Sec. 10.55.606. Directs the department to file eligible documents. Indicates how the department is to file a document. Addresses the situation when the department refuses to file a document. Describes the department filing duty as ministerial and as not affecting the validity of the document or the correctness of the information in the document, and as not creating a presumption of validity, invalidity, or information correctness or incorrectness.
- Sec. 10.55.607. Allows an appeal if the department refuses to file a document. Allows the court's decision to be appealed as in other civil proceedings.
- Sec. 10.55.608. Provides that a department certificate (delivered with a copy of the filed document) conclusively establishes that the original is on file.
- Sec. 10.55.609. Establishes a criminal penalty for signing a document knowing it is false for delivery to the department.
- Sec. 10.55.610. Allows the department to submit interrogatories (formal questions) to an entity that is a party to a transaction to determine if the entity has complied with the chapter. Indicates when the answers are due and establishes certain criteria for the answers, including who is to answer the questions. Allows a court petition to be filed about the due date, modification, or setting aside of the questions.
- Sec. 10.55.615. Establishes that the questions requested by the department and the answers are confidential. Establishes when the department may disclose information from them.

- Sec. 10.55.620. Establishes a criminal penalty for failing to answer interrogatories from the department. Allows the department to delay or base its filing of a document on receiving proper answers and on the information in the answers.
- Sec. 10.55.625. Gives the department the necessary power to implement the chapter.
- Sec. 10.55.701. Requires that, when applying and construing this chapter, consideration must be given to promoting consistency among enacting states.
- Sec. 10.55.702. Indicates how the chapter relates to the Electronic Signatures in Global and National Commerce Act.
- Sec. 10.55.901. Defines terms for the new chapter.
- Sec. 10.55.902. Gives the new chapter a short title: Alaska Entity Transactions Act.
- Section 12.** Amends a section in the partnership chapter to create an exception for the new chapter relating to the consent required to become a partner.
- Section 13.** Amends a section in the partnership chapter to create an exception for the new chapter that relates to a partner's transferable interest. States that a partner's interest is personal property, whether or not transferable.
- Section 14.** Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed).
- Section 15.** Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed).
- Section 16.** Amends the partnership chapter to remove the ability of a partnership to merge with a limited partnership under that chapter.
- Section 17.** Amends the partnership chapter to conform merger plans to the change in bill section 16.
- Section 18.** Amends the partnership chapter to conform the merger approval requirements to the change in bill section 16.
- Section 19.** Amends the partnership chapter to provide that a merger between a partnership and another form of entity is covered by the new chapter.
- Section 20.** Amends the partnership chapter to conform the provisions about the effect of a merger to the change in bill section 16.
- Section 21.** Amends the partnership chapter to conform the statement of merger to the change in bill section 16.



**Section 22.** Conforming change (AS 32.06.902, 32.06.903, and 32.06.904 are repealed). Deletes reference to AS 32.06.908. States that partnerships or limited partnerships may enter into mergers, interest exchanges, conversions, and domestications under the new chapter or in any other manner provided by law.

**Section 23.** Adds a definition of "domestic limited liability partnership."

**Section 24.** Adds definitions to the partnership chapter.

**Section 25.** Adds a provision allowing for amending a limited partnership certificate by filing a plan of merger, interest exchange, conversion, or domestication under the new chapter.

**Section 26.** Amends the limited partnership chapter to state that a partner's interest is personal property, whether or not the interest is transferable.

**Section 27.** Amends the limited partnership chapter to require that a limited partnership keep at its office a copy of any statement of merger, interest exchange, conversion, or domestication filed under the new chapter.

**Section 28.** Amends the limited partnership chapter to remove conversions from the application of the partnership chapter (AS 32.06) and to make the application of AS 32.06 to cases not covered by the limited partnership chapter subject to the new chapter.

**Section 29.** Amends the limited partnership chapter to change the definition of "limited partnership" to exclude certain entities and to limit the term to entities under the chapter.

**Section 30.** Repeals certain statutes.

**Section 31.** Describes how certain changes in the bill make indirect court rule amendments.

**Section 32.** Allows the department to get started on regulations for the Act.

**Section 33.** Provides a saving clause for actions and proceedings that are begun, or rights that have accrued, before the bill's effective date.

**Section 34.** Makes bill section 32 go into effect immediately.

**Section 35.** Gives the bill, except as provided in sec. 34, an effective date of July 1, 2013.