

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 15, 2016
10:05 a.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Gabrielle LeDoux
Representative Cathy Tilton
Representative Sam Kito

MEMBERS ABSENT

Representative Andy Josephson
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 126(L&C)

"An Act establishing an exemption for the offering and sale of certain securities."

- MOVED CSSB 126(L&C) OUT OF COMMITTEE

SENATE BILL NO. 206

"An Act relating to a reinsurance program for residents who are high risks and insurer assessments to cover the costs of the reinsurance program; relating to application for state innovation waivers for health care insurance; relating to definitions of 'residents who are high risks' and 'covered lives'; and providing for an effective date."

- SCHEDULED BUT NOT HEARD; PENDING REFERRAL

PREVIOUS COMMITTEE ACTION

BILL: SB 126

SHORT TITLE: SMALL SECURITY OFFERINGS

SPONSOR(S): SENATOR(S) COSTELLO

01/19/16	(S)	PREFILE RELEASED 1/15/16
01/19/16	(S)	READ THE FIRST TIME - REFERRALS
01/19/16	(S)	L&C, FIN
02/11/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

02/11/16	(S)	Heard & Held
02/11/16	(S)	MINUTE(L&C)
03/03/16	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/03/16	(S)	Moved CSSB 126(L&C) Out of Committee
03/03/16	(S)	MINUTE(L&C)
03/04/16	(S)	L&C RPT CS 3DP SAME TITLE
03/04/16	(S)	DP: COSTELLO, GIESSEL, MEYER
04/05/16	(S)	FIN AT 5:00 PM SENATE FINANCE 532
04/05/16	(S)	Heard & Held
04/05/16	(S)	MINUTE(FIN)
04/06/16	(S)	FIN RPT CS(L&C) 5DP 1NR
04/06/16	(S)	DP: MACKINNON, MICCICHE, BISHOP, DUNLEAVY, HOFFMAN
04/06/16	(S)	NR: OLSON
04/06/16	(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/06/16	(S)	Moved CSSB 126(L&C) Out of Committee
04/06/16	(S)	MINUTE(FIN)
04/09/16	(S)	TRANSMITTED TO (H)
04/09/16	(S)	VERSION: CSSB 126(L&C)
04/10/16	(H)	READ THE FIRST TIME - REFERRALS
04/10/16	(H)	L&C
04/13/16	(H)	L&C AT 3:15 PM BARNES 124
04/13/16	(H)	Scheduled but Not Heard
04/14/16	(H)	L&C AT 9:00 AM BARNES 124
04/14/16	(H)	Scheduled but Not Heard
04/15/16	(H)	L&C AT 10:00 AM BARNES 124

WITNESS REGISTER

SENATOR MIA COSTELLO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor, introduced CSSB 126(L&C).

WESTON EILER, Staff
Senator Mia Costello
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Senator Costello, sponsor, provided a sectional analysis of CSSB 126(L&C).

KEVIN ANSELM, Director
Anchorage Office
Division of Banking and Securities
Department of Commerce, Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on CSSB 126(L&C).

ACTION NARRATIVE

[10:05:16 AM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting back to order at 10:05 a.m. Representatives Olson, LeDoux, Hughes, Tilton, and Colver were present at the call back to order. Representative Kito arrived as the meeting was in progress.

[The meeting was a continuation of the meeting recessed at 10:11 a.m., 4/14/16.]

SB 126-SMALL SECURITY OFFERINGS

[Contains discussion of HB 194]

[10:05:54 AM](#)

CHAIR OLSON announced that the first order of business would be CS FOR SENATE BILL NO. 126(L&C), "An Act establishing an exemption for the offering and sale of certain securities."

[10:06:56 AM](#)

SENATOR MIA COSTELLO stated that [CSSB 126(L&C)] has been under consideration for several years while related federal securities regulations were drafted. Alaska is following other states that have taken this action and are having success in this regard. The bill allows businesses, entrepreneurs, and innovators to access capital by soliciting donations on a portal or a web site, in a manner similar to Kickstarter or GoFundMe. However, [CSSB 126(L&C)] directs the following: contributions go through the Department of Commerce, Community & Economic Development (DCCED); the amount of a contribution by an investor is limited; and the contributions are held by a bank until accessed by the business. Senator Costello said the bill would spur the economy because small business growth has a significant effect on the economy, as has been established by governmental and private research [documents not provided]. She noted the foregoing concept is also included in other proposed legislation, and is an exciting opportunity for Alaskans to equity-invest in Alaskan-owned businesses.

10:09:55 AM

WESTON EILER, Staff, Senator Mia Costello, informed the committee that [CSSB 126(L&C)] utilizes a concept new to Alaska of equity "crowdfunding" in which small businesses and entrepreneurs can solicit investments of up to \$7,500 per year each from a large group of people. Present options such as GoFundMe and Kickstarter do not allow for equity ownership in the new business, however, [CSSB 126(L&C)] provides an exemption from the Alaska Securities Act that will allow small businesses to give equity ownership to investors, and also provides safeguards to protect investors. The exemption is required because the investments are on a very small scale. Mr. Eiler paraphrased from the following sectional analysis [original punctuation provided]:

Section 1. Amends the Alaska Securities Act (AS 45.55) by adding a new section. Sec. 45.55.175(a) exempts the sale of securities through crowdfunding between Alaska businesses and residents from the requirements of AS 45.55.070 - 45.55.120 (registration of securities) and AS 45.55.150 (sales and advertising literature). Sets new limitations and requirements on the offer and sale of this type of securities including:

- (1) issuer's organizational entity must be for-profit, and located and licensed in Alaska,
- (2) securities under this section may only be sold to Alaska residents and must be in compliance with federal law's (Securities Act of 1933) residency requirements for interstate sale of securities,
- (3) sale of securities under this section by a for-profit entity are capped at \$1,000,000,
- (4) investments by an individual in a business under this exemption are capped at \$7,500 during a 12-month period,
- (5) issuer of securities under this section must have a reasonable belief that the purchase of securities is for investment not resale,
- (6) commissions for persons participating in the offer or sale for the issuer are prohibited,
- (7) requires escrow account deposit of investor funds until the minimum target for the issuer is met,
- (8) notice to the department about solicitation of sale of securities under this section,
- (9) restrictions on who may issue securities under this section,

(10) disclosures to investors about this type of securities exemption in statute and restriction on resale,

(11) requires signed investor acknowledgement of investment risk,

(12) exemption for sale of this type of securities may not be used along with other exemptions to the Alaska Securities Act,

(13) sale of this type of securities are covered by anti-fraud statutes and other provisions under AS 45.55.010 - 45.55.028.

Sec. 45.55.175(b). Allows the department to deny or revoke an exemption under this section if the sale would lead to a fraud on purchasers. Sec. 45.55.175(c). Requires the Department of Commerce, Community, & Economic Development to charge an applicant a filing fee for an exemption under this section. Sec. 45.55.175(d). Prohibits an issuer from using the exemption under this section if the entity or its officers are subject to a disqualifier under the Dodd-Frank Wall Street Reform and Consumer Protection Act - U.S.C. 78c(a)(39). Sec. 45.55.175(e). Defines terms for the section.

Section 2. Adds a sec. 45.55.175 exempting transactions under this bill to the list of transactions that are exempt from basic security registration requirements under AS 45.55.070 and AS 45.55.075 (the section addressing federal covered securities).

[10:16:20 AM](#)

MR. EILER further explained that the bill establishes a different set of regulations for a small-scale securities offering in that the business would apply to the Division of Banking and Securities, DCCED, for authorization to issue and solicit investments, and the safeguards in the bill ensure certain protections to investors. This is a way to help economic development - especially in rural areas - by removing traditional barriers, and has garnered positive results in over 24 states.

REPRESENTATIVE HUGHES expressed her support for economic development. She asked how Alaska residency would be established.

MR. EILER deferred to DCCED.

REPRESENTATIVE HUGHES directed attention to [page 2, lines 4-7 which read]:

(3) the sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption may not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance on this exemption;

REPRESENTATIVE HUGHES asked whether the cap of \$1 million is overall, or per year.

MR. EILER read from [paragraph] 3 [text previously provided]. He said he would confirm whether it is \$1 million per year.

REPRESENTATIVE HUGHES directed attention to [page 2, lines 18-25 which read]:

(7) the issuer of the security shall deposit in an escrow account in a bank or other depository institution authorized to do business in this state all funds received from investors until the minimum target dollar amount for the security offering is met; the issuer shall file the escrow agreement with the administrator, and the contents of the escrow agreement must include a statement that the proceeds of the sale under this section will not be released from the escrow account until the minimum target dollar amount for the security offering is met; all funds shall be used in accordance with representations made to investors;

REPRESENTATIVE HUGHES asked who determines the minimum target, and whether the minimum is based on a case-by-case basis.

MR. EILER advised that the intention was to create a bill with safeguards for investors and which also could accommodate new types of investment. Although the escrow account is a statute of the bill, the web site or portals would be handled in regulation. A small business or entrepreneur must make an application to the division, and at that time the business plan would be assessed, thus the division is involved throughout the process to provide oversight.

[10:22:46 AM](#)

REPRESENTATIVE LEDOUX referred to similar legislation in another proposed bill, and said there should be consistency between both bills. She cautioned against a possible conflict.

SENATOR COSTELLO said the sponsors are aware of the other legislation; if both bills pass, the related section would be removed from the other bill.

REPRESENTATIVE LEDOUX questioned whether the crowdfunding investment amount is the same in both bills.

MR. EILER confirmed that the two bills currently differ in the following ways: the investment amount; the placement of the escrow account in statute or regulation; and additional safeguards.

[10:25:52 AM](#)

KEVIN ANSELM, Director, Anchorage Office, Division of Banking and Securities, Department of Commerce, Community & Economic Development, offered to explain the differences between [CSSB 126(L&C)] and [HB 194]. In response to Representative Hughes' question on residency, she said residency in [CSSB 126(L&C)] is established by employment, living conditions, and the intent to remain, but is not based upon the receipt of an Alaska permanent fund dividend (PFD) received through the Permanent Fund Dividend Division, Department of Revenue.

REPRESENTATIVE HUGHES surmised residency requires physical residency.

MS. ANSELM said the participant has to be a citizen in Alaska. Regarding the \$1 million amount per year that could be used by one of the crowdfunded businesses, she explained that if the business accrues more than \$1 million, the provision exceeds a federal exemption, and "kicks into federal laws relating to securities." Regarding escrow, in [CSSB 126(L&C)] escrow is addressed in regulation. Currently, when the division needs to put funds in escrow because of other securities provisions in the law, the division looks at the investment and sometimes disburses funds in stages. The division would also consider the background of the business, or of the entrepreneur, to determine the escrow requirement. Ms. Anselm said, "There'll be a lot of information that needs to be provided, but not near the information that would be provided for a regular securities registration prospectus which, as you know, can be quite thick."

REPRESENTATIVE TILTON asked Ms. Anselm to define "other depository institution authorized" as found on [page 2, line 19] [text previously provided].

MS. ANSELM stated other depository institutions would be credit unions. In further response to Representative Tilton, she said her understanding from the bill's sponsors is the banks and credit unions would be chartered in Alaska.

REPRESENTATIVE LEDOUX asked for the current investment limit in [HB 194].

[10:30:43 AM](#)

MS. ANSELM stated that HB 194 proposed a \$5,000 limit, was amended in the House Judiciary Standing Committee to \$10,000; in further response to Representative LeDoux, she said there were no changes made in the House Finance Committee.

REPRESENTATIVE KITO directed attention to page 2, beginning on line 11 which read:

(5) the issuer reasonably believes that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security;

REPRESENTATIVE KITO asked how the issuer would ensure that its investors would not resell their investment.

MS. ANSELM responded:

First, the issuer is responsible for determining that and typically, and this is true in other exemption sorts of securities investments, the issuer would typically have a written assertion from the investor, that they have no intent to, to sell the securities. The other issue here is that these securities are, are really, they're not easily tradable, in other words, if someone wants to sell the security, or bequeath it to someone, there are certain, it has to fall under another exemption, otherwise it has to be registered. ... Investors need to know that they are not easily alienable, so to speak, so they're not going to be trading these on a market.

REPRESENTATIVE KITO surmised the investment is not similar to receiving a stock certificate; there is not actual ownership by the investor until the crowdfunding activity has been realized.

MS. ANSELM advised the investor would receive a stock certificate or a note, however, the document would state that the securities are not transferable unless there is a further exemption.

REPRESENTATIVE HUGHES asked how marijuana businesses would be handled, given federal restrictions on banking.

MS. ANSELM observed that rules related to marijuana require the residency of investors to be established by receipt of a PFD, which is a higher status of residency than required by [CSSB 126(L&C)]. Otherwise, there is no prohibition on investing in securities related to marijuana businesses; in fact, larger businesses have begun registering with the U.S. Securities and Exchange Commission.

[10:35:44 AM](#)

REPRESENTATIVE LEDOUX returned to her understanding that if both bills pass, crowdfunding would be removed from the omnibus securities bill; however, there is substantive inconsistency between the bills related to the investment amount.

MS. ANSELM stated that in addition to HB 194, its companion bill, SB 108, is held in the Senate Finance Committee (SFIN), and if HB 194 passes from the House, it would also advance to SFIN, where a committee substitute would be drafted to remove crowdfunding from HB 194. At that time, the crowdfunding provisions in [CSSB 126(L&C)] would prevail.

CHAIR OLSON suggested the revisor of statutes would resolve the question.

MS. ANSELM was unsure.

REPRESENTATIVE KITO stated that if the bills reflected different investment amounts it would be difficult for the revisor to glean legislative intent.

CHAIR OLSON surmised one bill would precede the other.

MS. ANSELM offered that two bills cannot apply to the same statute. In further response to Chair Olson, she restated that SB 108 is held in SFIN.

REPRESENTATIVE HUGHES noted that HB 194 originally set the investment amount at \$5,000, and she inquired as to the original intent.

MS. ANSELM explained that since the bill was first proposed, almost two years ago, there has been more experience in other states; in fact, \$10,000 is the federal limit allowed for crowdfunding. In further response to Representative Hughes, she said the amount is set at the will of the legislature.

REPRESENTATIVE LEDOUX questioned how to propose a friendly amendment raising the investment limit to \$10,000, since Alaskans "tend to have a higher income."

CHAIR OLSON suggested proposing an amendment on the floor.

[10:43:04 AM](#)

CHAIR OLSON opened public testimony. After ascertaining no one wished to testify, public testimony was closed.

[10:43:15 AM](#)

REPRESENTATIVE HUGHES moved to report CSSB 126(L&C), Version 29-LS1284\W, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSB 126(L&C) was reported from the House Labor and Commerce Standing Committee.

[10:43:37 AM](#)

ADJOURNMENT

The House Labor and Commerce Standing Committee meeting was recessed at 10:43 a.m. until 3:15 p.m. [The meeting reconvened and was adjourned at 8:56 a.m. on 4/16/16.]