

HB

308

<TARGET><BILL>HB 308</BILL><SUBJECT>HB
308</SUBJECT><COMM>HF IN28</COMM></TARGET>

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 1, 2014

FURTHER REFERRALS:

Date of Committee Action: 4/9/14

The FINANCE Committee considered:

HB 308

HOUSE BILL NO. 308

"An Act relating to the exemptions under the Alaska Securities Act and to securities issued by Native corporations; and providing for an effective date."

HB 308 ALASKA SECURITIES ACT EXEMPTIONS

Recommends it be replaced with HCS or CS for _____ (_____)

For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 DHS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*FN# is assigned by Chief Clerk's Office				
*FN#	List by Dept(s):	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
1	CED	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Catherine Neuman	✓			
	MUNOZ			g	
	NEUMAN	✓			
	THOMPSON	✓			
	T. Wilson	✓			
	Holmes	X			
	COSTELLO	✓			
Chair:	Bill				X
Chair:	ALAN				X
	AUSTRIAN				

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: HB 308
Fiscal Note Number: 1
(H) Publish Date: 4/1/14

Identifier: HB308-DCCED-DBS-02-25-14
Title: ALASKA SECURITIES ACT EXEMPTIONS
Sponsor: HOLMES
Requester: House Labor and Commerce

Department: Department of Commerce, Community and
Economic Development
Appropriation: Banking and Securities
Allocation: Banking and Securities
OMB Component Number: 2808

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues	(6.8)	6.8	(6.8)	(6.8)	(6.8)	(6.8)	(6.8)
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **Yes**
If yes, by what date are the regulations to be adopted, amended or repealed? **11/01/14**

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: <u>Kevin Anselm, Director</u>	Phone: <u>(907)269-4157</u>
Division: <u>Banking and Securities</u>	Date: <u>03/28/2014 11:00 AM</u>
Approved By: <u>Jeanne Mungle, Director</u>	Date: <u>03/28/14</u>
Agency: <u>Administrative Services</u>	

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. HB 308

Analysis

HB308 changes the required exemption filings under AS 45.55.900(b)(5)(A),(B),(C) and (b)(7). The Division of Banking and Securities receives a combined average of about 136 exemption filings per year under the three exemption types that will no longer require fees and filing. As a result of this, there will be a decrease in revenues of approximately \$6,800 per year (\$50 per standard exemption plus \$75 if the filer desires expedited review).

Regulations will be amended to delete references to these filings and fees.

1/9/14



HB 308 Alaska Securities Act Exemptions

PREPARED BY THE DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC
DEVELOPMENT, DIVISION OF BANKING AND SECURITIES

FOR HOUSE LABOR AND COMMERCE COMMITTEE – HB 308

MARCH 31, 2014

HB 308 Summary

Substantive changes:

- ▶ Eliminates fee and filing requirements for certain small or limited offering exemptions from registration to:
 - ▶ 10 or fewer investors
 - ▶ 25 or fewer investors
 - ▶ Existing security holders
- ▶ Increases the division's time to review an "offer to repay" (rescission offer) from 2 to 10 days.
- ▶ Clarifies that securities issued by Alaska Native Claims Settlement Act (ANCSA) corporations in compliance with applicable federal law are exempt from registration.

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Small offering exemptions – page 2 line 21, page 3 line 20

- ▶ Limited numbers of investors
- ▶ No public solicitation or advertising
- ▶ Requires legends explaining limitations on securities resale
- ▶ Information required so investors can make informed decisions (more prescriptive if more investors involved)

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Limited offering exemption – page 4 line 19

- ▶ Limited to existing security holders
- ▶ No commission beyond a standby commission is paid.

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- ▶ Eliminates:
 - ▶ \$50 filing fee (or \$125 for expedited review)
 - ▶ Form preparation
 - ▶ 136 filings average per year/\$6,800 revenue

- ▶ Retains:
 - ▶ Investor protections (anti-fraud provisions)
 - ▶ Division's oversight and enforcement
 - ▶ Investor ability to seek rescission or monetary damages

- ▶ Increases:
 - ▶ Division time to review rescission offers from two to ten days (page 10 line 30)

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Exempts ANCSA securities issued in compliance with applicable federal law.

Including 'after-issued' securities issued to:

- ▶ Alaska Natives born after December 18, 1971,
- ▶ descendants of Alaska Natives,
- ▶ eligible Alaska Natives who missed enrollment, and
- ▶ Alaska Native shareholders who are 65 years old or older

Alaska Securities Act 45.55.138 states “The *initial* issue of stock of a corporation organized under Alaska law pursuant to 43 U.S.C. 1601 et seq (Alaska Native Claims Settlement Act) is not a sale of a security under AS 45.55.070 and 45.55.990(28).” (emphasis added)



4/9/14

Notice of Exempt Securities Transactions
Under AS 45.55.900(b)(5)(A)

(To be filed along with the fee required by 3 AAC 08.920 (6))

Please fill out this form and submit to:

Securities Administrator
Alaska Division of Banking and Securities
P.O. Box 110807
Juneau, AK 99811-0807
(907) 465-6339

1. Name, Address and Telephone number of contact person filing this notice:			
Full Name	Address	Phone	
		Fax	
The person signing this form must show name & address above. If different from the contact person, show information on signer as well. The E-mail address given must show the address to send the order of effectiveness.			
2. Name, Address and Telephone number of Issuer Entity requesting exemption:			
Name of Issuer	Address	Phone	
3. <input type="checkbox"/> Yes <input type="checkbox"/> No Formed, or to be formed, as an Alaska domestic (Corp., LP, LLP, or LLC) under Alaska Statutes Title 10 or 32. (This information is for statistical purposes only.)			
4. Please provide a brief description of terms of the offering (including security and price). If more space is needed, use page two or include attachments.			
5. Date sales are to commence: _____ (may not be sooner than 2 days after the filing date of the exemption notice or as determined by the administrator)			
6. Describe any special circumstances you ask the administrator to consider. If more space is needed, use page two or include attachments. <u>Waiver requests</u> must include full disclosure to the administrator of the facts and relevant material factors relating to the request.			

By filing this document, I affirm the following:

- Sales will be made to no more than 10 persons in this state, other than those designated at AS 45.55.900(b)(4), during the 12 consecutive-month-period-of-effectiveness regardless of whether the seller or any of the buyers is then present in this state. (See Attachment B below, do not return to agency).
- As a consequence of this sale the number of security holders will not exceed 20 in total.
- It is understood that "in this state" has the same meaning as that phrase is used at AS 45.55.980(c) (see Attachment A below, do not return to agency);
- A commission or other remuneration will not be paid or given directly or indirectly for soliciting a prospective buyer in this state;
- A legend will be placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under The Alaska Securities Act, AS 45.55, and cannot be resold without registration under AS 45.55 or exemption from such registration;
- Offers will be made without public solicitation or advertisement;
- This notice filing is the notice required under AS 45.55.900(b)(5)(A)(iv), and must be in the hands of the administrator, along with the fee described at 3 AAC 08.910(6), **at least two days before any sales are made**, unless the two-day waiting period is waived by the administrator in the order of effectiveness; and
- The offering will comply with the limitations of 3 AAC 08.910(3)(E).

Under AS 45.55.160, it is **UNLAWFUL** to file with the Administrator of Securities any document that would make, or cause to be made, an untrue or misleading statement of material fact or omit to state a material fact necessary so as to make the statement made not misleading.

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Signature of attorney or principal (please describe which)	Title	Date
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E-mail address :

Additional space (Please refer to paragraph number being amplified):	For Office Use Only
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**Notice of Exempt Securities Transactions
Under AS 45.55.900(b)(5)(B)
(To be filed along with the fee required at 3 AAC 08.910(6))**

Please fill out this form and submit to:

**Securities Administrator
Alaska Division of Banking and Securities
P.O. Box 110807
Juneau, AK 99811-0807
(907) 465-6339**

1. Name, Address, and Telephone number of contact person filing this notice:			
			Phone
Full Name	Address		Fax
The person signing this form must show name & address above. If different from the contact person, show information on signer as well.			
2. Name, Address, and Telephone number of Issuer Entity requesting exemption:			
			Phone
Name of Issuer	Address		Phone
3. <input type="checkbox"/> Yes <input type="checkbox"/> No Formed, or to be formed, as an Alaska domestic (Corporation, LP, LLP, or LLC) under Alaska Statutes Title 10 or Title 32.			
4. Please provide a brief description of terms of the offering (including security and price). If more space is needed, use page two or include attachments.			
5. Date sales are to commence: _____ (may not be sooner than 2 days after the filing date of the exemption notice or as determined by the administrator)			
6. Describe any special circumstances you ask the administrator to consider. If more space is needed, use page two or include attachments. <u>Waiver requests</u> must include full disclosure to the administrator of the facts and relevant material factors relating to the request.			

By filing this document, I affirm the following:

Sales will be made to no more than 25 persons in this state other than those designated at AS45.55.900(b)(4) during the 12 consecutive-month-period-of-effectiveness regardless of whether the seller or any of the buyers is then present in this state. It is understood that "in this state" has the same meaning as that phrase is used at AS 45.55.980(c) (See Attachment A below, do not return to agency);

Sales will be made solely in this state which is understood to mean that the issuer meets the criteria of 17 C.F.R. 230.147(c) (See Attachment B below, do not return to agency);

Before a sale, the prospective buyer will be furnished access to information sufficient to make an informed investment decision. That information must satisfy the requirement of AS 45.55.900(b)(5)(B)(ii), and will be furnished to the administrator at the administrator's request;

Commissions or other remuneration meet the requirements of AS 45.55 and will be made only to persons registered under AS 45.55.040;

A legend will be placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under The Alaska Securities Act, AS 45.55, and cannot be resold without registration under AS 45.55 or exemption from such registration;

A signed agreement will be obtained from each buyer at the time of sale or before that the buyer is buying for investment purposes and that the securities will not be resold without registration or exemption under AS 45.55;

Offers will be made without public solicitation or advertisement;

This notice filing is the notice required under AS 45.55.900(b)(5)(B)(vii), and must be in the hands of the administrator, together with the fee described at 3 AAC 08.910(6), **at least two days before any sales are made**, unless the two-day waiting period is waived by the administrator in the order of effectiveness; and

The offering will comply with the limitations of 3 AAC 08.910(3)(E).

Under AS 45.55.160, It is **UNLAWFUL** to file with the Administrator of Securities any document that would make, or cause to be made, an untrue or misleading statement of material fact or omit to state a material fact necessary so as to make the statement made not misleading.

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Signature of attorney or principal (please describe which)	Title	Date
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E-mail address :	
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Additional space (Please refer to paragraph number being amplified):	For Office Use only

Notice of Exempt Securities Transactions
Under AS 45.55.900(b)(7)(B)
(To be filed along with the required fee described at 3 AAC 08.920(6))

Please fill out this form and submit to:

Securities Administrator
Alaska Division of Banking and Securities
P.O. Box 110807
Juneau, AK 99811-0807
(907) 465-6339

STATUTORY REFERENCE: AS 45.55.900(b) The following transactions are exempted from AS 45.55.070 and 45.55.075: (7) a transaction under an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if (A) a commission or other remuneration, other than a standby commission, is not paid or given directly or indirectly for soliciting a security holder in this state; or (B) the issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next five full business days;

This is a self-executing exemption if there is no commission to be paid under (b)(7)(A).

1. Name, Address, and Telephone number of person filing this notice:		
		Phone
Full Name	Address	Fax
The person signing this form must show name & address above. If different from the contact person, show information on signer as well.		
2. Name, Address, and Telephone number of Issuer:		
		Phone
Name of Issuer	Address	Phone
3. Please provide a brief description of terms of the transaction (describe security and price):		
4. Date sales are to commence: _____ (may not be sooner than 5 days after the filing date of the exemption notice or as determined by the administrator).		

5. Description of the commission or other remuneration, other than a standby commission, being paid or given directly or indirectly for soliciting a security holder in this state.

6. Describe any special considerations you ask the administrator to consider, including any requests for waiver of any limitations of the exemption. Waiver requests must include full disclosure to the administrator of the facts and relevant material factors relating to the request.

Additional information (Please refer to paragraph number being amplified):

By filing this notice, I affirm that all statutory requirements of AS 45.55.900(b)(7) have been met to date and will continue to be met during the offering period.

Signature of attorney or principal (please describe which) Title Date

E-mail address :



Representative Lindsey Holmes

House Bill 308 An Act relating to exemptions under the Alaska Securities Act; and providing for an effective date.

Under current law, small businesses are required to pay a fee and file sensitive personal information of individuals purchasing securities that they issue and file it with the Department of Commerce, Community and Economic Development (DCCED). This information is subject to a public records request and serves no purpose to the Department. House Bill 308 removes these fees and reporting requirements in an effort to make it easier for small businesses to raise startup funds.

HB 308 removes the reporting requirements and fees for three types of transactions:

- Sales by an issuer to not more than 10 persons in the state;
- Sales by an issuer to not more than 25 persons in the state;
- An offer to existing security holders of the issuer.

While removing the onerous reporting requirements, the bill still requires the issuer of the securities to provide required information to investors in compliance with the Securities Act. The bill keeps the Act's consumer protection language intact and does not inhibit the Division of Banking and Securities to investigate violations or the public to seek damages through the court system.

The bill also seeks to clarify that the stock issued by ANCSA corporations in compliance with federal law does not violate the Securities Act as well as offers some updates to dates and conforming language changes.

Please join me in supporting this simple piece of legislation that updates the Securities Act and will make it easier for small businesses to generate startup funds.

Robert Ervine

From: Allan Johnston <allan@hikealaska.com>
Sent: Thursday, March 13, 2014 10:23 AM
To: Rep. Lindsey Holmes
Subject: HB 308 support

Dear Representative Holmes,

I strongly support the intent and passage of House Bill 308. The Director of Banking and Securities did a fantastic job supporting the goals and implementation of the \$13 million dollar Municipality of Anchorage's 49th State Angel Fund. The modifications and changes addressed by HB 308 would have saved the private sector participants and the Alaska Department of Banking and Securities a great deal of time and money had this legislation been passed prior to the 49th State Angel Funds formation. This is appropriate legislation that will help Alaskan entrepreneurs raise capital more cost effectively in the future and will help make our Alaska intrastate capital market more competitive on a national basis. Thank you for your work and effort on this important bill.

Sincerely,

Allan R Johnston

Chief Encouragement Officer

TEAM Network Inc.

Jordyn Grant

From: Julius Brecht <jbrecht@akatty.com>
Sent: Wednesday, March 26, 2014 12:59 PM
To: Rep. Lindsey Holmes
Cc: lorie.hovanec@alaska.gov
Subject: HB 308

Rep. Lindsey Holmes:

I recently reviewed House Bill 308, an act relating to exemptions from the Alaska Securities Act (ASA). I am an attorney in private practice with offices presently in Anchorage, Alaska. Principal areas of my practice include state and federal securities law and business and finance law. I am a past director of the Alaska Division of Banking and Securities, the division within the Alaska Department of Commerce, Community and Economic Development, charged with administering ASA. In that capacity, I was also appointed as the Alaska Administrator of Securities (Administrator) to administer ASA at the time. My comments are my own, i.e., they are not presented on behalf of any other person. My comments are based upon my experience in reviewing and making use of ASA, primarily in advising clients from time to time.

Other than grammatical and other limited changes, for which I have no comment, HB 308 makes a number of changes to ASA, which in substance fall within two areas: (1) elimination of filing requirements relating to certain transactional exemptions from securities registration; and (2) addition of a new transactional exemption dealing with stock issued by corporations formed under the Alaska Native Claims Settlement Act (ANCSA). Through this email, I express my position as being in favor of both items (1) and (2).

With regard to item (1), the changes are to occur in AS 45.55.900(b)(5)(A)(iv), 45.55.900(b)(5)(B)(vii) and 45.55.900(b)(7)(B). In each case, the change is to eliminate a requirement that a filing be made with the Administrator before the offering is made and before a person may rely upon the exemption. In each case, the filing with the Administrator is of limited information regarding the proposed offering but not a copy of the disclosure statement through which the offering is to be made. In each case, the person seeking the corresponding exemption from registration can simply read the statute and come to the conclusion that the terms of the exemption can, or cannot otherwise, be satisfied. In addition, even should the filing requirements be eliminated, the person may under AS 45.55.970(e) seek an interpretive opinion from the Administrator as to the availability of a given registration exemption, based upon a given set of facts. Elimination of the filing requirement does mean that, thereafter, the division does not get notice of, and does not get limited information regarding, the offering from the prospective issuer before the offering is commenced. The usefulness to the Administrator in his or her role in protecting the investing public by receipt of such a filing prior to commencement of an offering is a question for the division. However, based upon my experience in dealing with the exemptions associated with item (1), I believe the elimination of the filing requirements does no harm to the integrity of ASA in protecting the investing public.

- With regard to item (2), the new transactional exemption is set forth at Sec. 45.55.900(b)(21). It appears that the proposed new transactional exemption from registration deals only with stock issued to Alaska Natives in the various regional and village corporations established through ANCSA. The initial issue of that stock on or about 1971 was exempted from registration under ASA through AS 45.55.138. Stock subsequently issued to Alaska Natives who did not participate in that initial issue of stock (After-Issued Stock) by those ANCSA corporations is also a security under ASA. There does not otherwise appear to be a workable exemption from registration under ASA for that After-Issued Stock when issued and distributed to Alaska Natives. I am not sure I see a reason for allowing an exemption for the initial issue of Alaska Native corporation stock and not have an exemption for After-Issued Stock later issued for a similar purpose, i.e., for Alaska Natives (whose only distinction from the Alaska Natives receiving the initial issue of stock is that they were born after that initial distribution) to share in ownership of the ANCSA corporation in question. Item (2) provides a transactional exemption in ASA for that After-Issued Stock.

Thank you for the opportunity to share my thoughts with you on HB 308.

Julius J. Brecht

jbrecht@akattv.com

www.akattv.com

Phone: 907.276.6401

Fax: 907.276.5093

Wohlforth | Brecht | Cartledge | Brooking

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TO BE USED, AND CANNOT BE USED, BY A TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE.

Joe Morrison
3641 Amber Bay Lp
Anchorage, AK 99515

March 14, 2014

Rep. Lindsey Holmes
RE: HB 308

Dear Rep. Lindsey Holmes:

I am writing in order to support HB308, legislation that would decrease filing notices with the State of Alaska Division's of Banking and Securities for offerings of select exempt securities.

This is positive. When new, small businesses form and begin to consider potential implications of securities offerings they have to do so at both the state and federal level; they then have to consider which types of exemptions to pursue, and what relevant notices to file with the appropriate level of government or securities regulator. Needless to say, this creates confusion and stress, not to say additional cost burdens in the form of legal fees for advice.

What we want, in Alaska, is to get these businesses up and running—and ease their paperwork and compliance burdens. Small businesses, in their infancy, are incredibly delicate. Anything that can be done to simplify the process for small business formation should be adopted wholeheartedly.

I enthusiastically support this bipartisan legislation as a longtime Alaskan.

Sincerely,

Joe Morrison