

**HB**

**308**

<TARGET><BILL>HB 308</BILL><SUBJECT>HB  
308</SUBJECT><COMM>SFIN28</COMM></TARGET>

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/14/14

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

**Finance Committee** considered HOUSE BILL NO. 308

## HB 308-ALASKA SECURITIES ACT EXEMPTIONS

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

and recommends:

- [ ] be replaced with SCS \_\_\_\_\_ (\_\_\_\_\_) [ ] Same Title [ ] Technical Title Change  
[ ] New Title/SCR No. \_\_\_\_\_
- [ ] adopt previous SCS \_\_\_\_\_ (\_\_\_\_\_) [ ] Same Title [ ] Technical Title Change  
[ ] New Title/SCR No. \_\_\_\_\_
- [ ] attached amendment(s)
- [ ] adopt \_\_\_\_\_ Letter of Intent
- [ ] further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CED	✓			1

[ ] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Anna Fairclough</i>	FAIRCLOUGH	✓			
<i>Clark Bishop</i>	BISHOP	✓			
<i>Michael J. Hoff</i>	DUNBAR	✓			
<i>Jim Hoffman</i>	Hoffman			✓	
<i>Donald Odson</i>	Odson			✓	
CO-CHAIR:					
CO-CHAIR: <i>K. Meyer</i>	Meyer	✓			

# 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 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>	(6.8)	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.



## 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 Alaska businesses seeking to raise startup money through the offering of securities are required to pay a fee and file a form with the Department of Commerce, Community and Economic Development (DCCED). 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 exempt security 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.

Under current law, if the security issuance qualifies as exempt from registration under AS 45.55.900(b), issuers are currently still required to file a form and pay a fee to the DCCED. DCCED collects this information and reviews it however it does not appear to add any protections to the State or the investors. Often small business owners hire lawyers to navigate the form which causes expense and can slow down the process.

While removing the reporting requirements, the bill still requires the business issuing the securities to provide required information to investors in compliance with the Securities Act so that they can make an informed investing decision. The bill keeps the Act's consumer protection language intact and does not inhibit the Division of Banking and Securities from investigating violations or the investor seeking damages through the court system.

The bill also changes the amount of time DCCED has to review rescission offers from only two days to ten days and has several conforming language changes.

The bill further seeks to clarify that stock issued by ANCSA corporations to Alaska Natives born after December 18, 1971 or issued after the original stock offering in compliance with federal law are exempt from registering under AS 45.55.070. This clean up responds to a report done by the United States Government Accountability Office that was concerned that Alaska Statutes were not treating newly issued ANCSA corporation stocks the same as the initial offering.

I respectfully request that you join me in supporting this update to the Alaska Securities Act that will make it easier for small businesses to generate startup funds.

State Capitol, Juneau, Alaska 99801 · (907) 465-4919 · Fax: (907) 465-2137  
Rep.Lindsey.Holmes@akleg.gov



# 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.

# HB 308

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)

# HB 308

Limited offering exemption – page 4 line 19

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

# HB 308

▶ 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)

# HB 308

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)



**Robert Ervine**

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**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 49<sup>th</sup> 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 49<sup>th</sup> 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

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**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

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**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*