

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

April 2, 2002
1:50 p.m.

MEMBERS PRESENT

Senator Ben Stevens, Chair
Senator Alan Austerman
Senator Loren Leman
Senator John Torgerson
Senator Bettye Davis

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 470(L&C)(title am)
"An Act relating to public offering statements required under the Uniform Common Interest Ownership Act; and providing for an effective date."

MOVED CSHB 470(L&C)(title am) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 306(L&C)
"An Act authorizing the Department of Community and Economic Development to issue permits to certain agencies to purchase, possess, and use certain drugs for euthanizing domestic animals."

MOVED CSHB 306(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 389(CRA)
"An Act eliminating the delayed repeal of a provision authorizing an exemption from and deferral of municipal property taxes on certain types of deteriorated property; and providing for an effective date."

MOVED CSHB 389(CRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

HB 470 - No previous action to consider.

HB 306 - No previous action to consider.

HB 389 - No previous action to consider.

WITNESS REGISTER

Representative Rokeberg
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of HB 470.

Ms. Robin Ward, Co-Chair
Legislative Affairs
Alaska State Homebuilders Association
PO Box 91443
Anchorage AK 99507

POSITION STATEMENT: Supported HB 470.

Mr. Jess Hall, Builder
PO Box 1987
Palmer AK 99645

POSITION STATEMENT: Supported HB 470.

Mr. Chuck Spinelli
9210 Vangard, #102
Anchorage AK 99507

POSITION STATEMENT: Supported HB 470.

Mr. John Faulkner, President
Land's End Development Corporation
4786 Homer Spit Rd.
Homer AK 99603

POSITION STATEMENT: Supported HB 470.

Ms. Shana Anderson, President
Alaska Animal Control Association
PO Box 307
Valdez AK 99686

POSITION STATEMENT: Supported HB 306.

Mr. Brett Reid
Kenai Animal Shelter
210 Fidalgo Ave.
Kenai AK 99611

POSITION STATEMENT: Supported HB 306.

Ms. Marianne Clark
Soldotna Animal Shelter
177 N. Birch St.
Soldotna AK 99669

POSITION STATEMENT: Supported HB 306.

Ms. Hava Lee, Executive Director
Juneau Gastineau Humane Society
PO Box 22246
Juneau AK 99802

POSITION STATEMENT: Supported HB 306.

Ms. Catherine Reardon, Director
Division of Occupational Licensing
Department of Community and Economic Development
P.O. Box 110806
Juneau AK 99811

POSITION STATEMENT: Commented on HB 306.

Mr. Mike Krieber
Staff to Representative Rokeberg
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on HB 389.

Mr. Marc Marlow
229 Whitney Rd.
Anchorage AK

POSITION STATEMENT: Supported HB 389.

ACTION NARRATIVE

TAPE 02-17, SIDE A

Number 001
#HB470

HB 470-COMMON INTEREST OWNERSHIP:OFFERING STMTS

CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:50 p.m. and announced HB 470 to be up for consideration.

REPRESENTATIVE ROKEBERG, sponsor of HB 470, said there is an anomaly in the state's common ownership act that was brought to his attention by a constituent of Senator Torgerson's.

That being during the construction of condominium type developments, it's necessary under our statute to provide a public offering statement which requires certain specific information including such things as a legal description and other technical matters, which in fact cannot be fully completed until the unit itself is completed. What the circumstances were in the Land's End area of Homer were that high end condominiums were being built on the two as-built, to-be-built custom

build bases in the cost range of half million to \$750,000, but because of the peculiarity of our statute, the delivery of the public offerings ticket couldn't occur until after the units were complete and at that time, under our statute, the buyer had the opportunity to back out of the deal. And on top of that, he had the opportunity to collect 10% of the value of the transaction. In other words, somebody could bargain for a very costly unit, back out of the deal, break his [indisc} contract and thus be rewarded by our statute to the tune of \$75,000.

What this bill does, Mr. Chairman, is fix that little anomaly by providing that a preliminary public offering statement be provided which is very similar in nature to the final product and also indicates if there is any award to be made by the courts that it could be up to 10%, not specifically 10%. Therefore giving the judge the ability to look at the circumstances and facts of the case.

SENATOR LEMAN said this was a revision to the Uniform Common Interest Ownership Act and asked if this was one of the uniform acts that they have adopted that's common across the United States.

REPRESENTATIVE ROKEBERG replied yes, that he had been working on a revision with the homebuilders for about three years.

SENATOR LEMAN asked if it was likely that other states would have the same anomaly unless they had revised the Uniform Act.

REPRESENTATIVE ROKEBERG replied that this usually doesn't come to light, because mostly when townhouse type condominiums are put together and marketed, they're not as high ended. So, there's not as much risk on the part of the developer if the transaction doesn't close.

This becomes very glaring when you have a high-end resort type condominium situation, like you do at the Land's End on the Homer spit, which the letter in the packet comes from, Mr. Johnson Faulkner, and the details of that particular plight that he is in.

SENATOR AUSTERMAN asked him to explain how this Act is different than one from a typical homeowner who custom builds a house.

REPRESENTATIVE ROKEBERG replied that in Alaska the first statutory act they had was the Horizontal Regime Act, which

allowed for the sales, marketing and legal conveyance of a condominium or a townhouse and that was superceded 18 years ago by the Uniform Common Ownership Act and all the newer ones are under the Common Ownership Act that sets up a different estate in land where you can convey fundamentally, airspace. for example a condo can be high rise building and the conveyance of title is only to any particular unit within that particular building.

SENATOR AUSTERMAN said a single unit home is a contract based upon building a house, a finite deal and asked if he was saying that a townhouse is not a finite deal.

REPRESENTATIVE ROKEBERG explained that you could have stand-alone property and fee simple and the ownership [indisc] fee, but they have no common ownership. He said it was not uncommon for detached single-family homes to have homeowner's associations that may own some land in common.

SENATOR AUSTERMAN said that the high-end complexes are based on the same decisions as the lower end ones. In more simplistic terms he thought this sounded like they were protecting them from themselves.

REPRESENTATIVE ROKEBERG responded:

I think what we're doing is facilitating commerce, here. What we have is a circumstance where it's an entirely unilateral right of the consumer or the buyer, could have the right not only to back out of the contractual obligations by statute, but they even have the ability to profit here. It's kind of an unusual circumstance.

MS. ROBIN WARD, Co-chair, Legislative Affairs, Alaska Homebuilders Association, said she is a professional association manager for common interest properties and that they support this bill. She said there was a model amendment of this Act that was also enacted in 1994 and this needed to be taken care of in the state of Alaska.

These are two issues that have really plagued us this year especially and we felt like we needed to fast-track these. We pulled these two out of the large bill to work on. Part of the problem is that the risk is higher in the higher end units, but the risk is the same for all developers when they can basically get to the closing table and someone can back out. It really does hurt on the financing side of it, but again I'll let Mr. Faulkner talk a little bit about that.

One of the reasons this is happening this year is that they are building a lot more of them right now. In Anchorage almost half of the listings are new construction and half of those fall under the Community Uniform Common Interest Ownership Act in one form or another.

Even today in our subdivision, if there is a small piece of land where a sign sits or any kind of a green belt, it triggers this law...

In Anchorage the developers are fairly well versed in this law, but one of the things they're finding out is that in out-lying areas common interest properties haven't been built before and they're not aware of this law.

MR. JESS HALL, Mat-Su Valley Builder, said he and a few others had done developments out there and have found that they had done condos in the mid-80s that had fallen in the Horizontal Property Regimes Act. Since then there hasn't been too much of that kind of building going on. More recently he did a subdivision, but it wasn't in exactly the right form to be called a public offering statement and if you don't hand out a public offering statement, you're liable for 10% of the sale price of the property. His development is all single-family fee simple and there are no common elements in terms of the houses that can be built or the lot sales, but the water system is common and falls under this act. This act could also apply to a tiny piece of property of 10 x 10 with a subdivision sign on it. If a public offering statement was not given to each of the homeowners, they are liable for 10% of the sales prices of their house. He thought it made sense to at least go to a point where a judge could state what the real cost was of negligence was on the part of the developer. He added that more revisions were needed than just this one Representative Rokeberg mentioned.

MR. CHUCK SPINELLI, Anchorage Homebuilders Association, said he had been building in Eagle Crossing Subdivision for the last 15 years and although the look of the whole subdivision hadn't changed much, the law has. In the beginning they didn't have to worry about public offering statements and there was some land held in common, green belts, etc. and people were paying about \$15 - \$20 per month. When the UCIOA law came through, they were inundated with regulations and expense. The new sections at Eagle Crossing cost about \$5 - \$7,000 to create this monster 2 inch thick volume of work called the public offering statement. For every one they hand out to a buyer, it costs another \$175 per copy. It basically describes the CT&R for the subdivision, etc. and at the very end, it tells them the amount of dues they should expect. At Eagle Crossing the dues are generally less than \$15 per month. In most of the sections they have reserved development rights and have never collected any dues, but in the event that

they do collect them, they'd be about \$180 per year. The penalty for not advising people that they were going to be responsible for \$180 per year for dues would be 10% of the home price. Their average sales price is \$180,000, which would make about \$18,000. This would be the penalty if they forgot to give someone a public offering statement. He also said that current statute doesn't outline how the amount is remitted.

He concluded that he supported HB 470 although more work was needed to be done on the Act.

MR. JOHN FAULKNER, President, Land's End Development Corporation, said he is developing a high-end custom condominium project adjacent to land at the resort at the tip of Homer Spit. He saw this as a clarification, not a substantive change.

The clarification is needed because the law is unclear and this does not serve anybody's interests. The reason it's unclear is that you can give a public offering statement to a buyer in full compliance with the intent of the act, let's just say, in July, and the 15 day clock starts to run. You can have the mutual intent to build a high-end custom condominium, proceed with construction financing and construction all the way through completion and then you have to survey the building - and I want to go back at this point to Mr. Austerman's question about what is different between a condominium and a typical home. One of the differences - we have to survey these things, we have to survey the blocks, the airspace that Representative Rokeberg was referring to. We need that survey to go into the final recorded document that really defines the person's legal description. That, in turn, is used to determine their percentage of ownership of these common areas. So, back to my original scenario where this 15-day statutory requirement of the right of rescission, let's call it, starts to run in July. You build the building, you get to closing or get to the point of completion and you have to survey and finalize your declaration and update your public offering statement to reflect that finality or that final square footage allocation that determine ownership. In a lot of cases they're the same. It doesn't change, but custom homes that change during construction can alter things. The point I'm trying to make here is that the law is not clear that you can issue a POS in good faith and full compliance with what I believe is the intent, yet get to final completion and a buyer could technically argue that this public offering statement is not the original

public offering statement and the 15-day clock starts at this point, i.e. after construction and, therefore, they have a right of rescission when as a developer, you have 100% invested. So, that is what Representative Rokeberg's bill HB 470 does. It clarifies that the original public offering statement is issued in good faith and is substantially the same as what is finally recorded and you're in compliance with the law. I think that serves the consumer's best interest. I think it serves general commerce best interests and the best interests of all parties. I'll say one other thing and that is really don't think the framers of this law intended a buyer to be able to back out of a deal at the eleventh and a half hour. So, I can't imagine that something that onerous was the original intent.

Back when this law was framed, I believe condominium development was really confined for the most part to large say - 50 unit plus buildings that were not as customized and certainly less expensive than what I'm doing. So, losing one deal maybe at the eleventh hour wasn't as onerous to a developer or as damaging, but clearly, I'm building three at a time and my bank is certainly aware of this loophole and it has impacted my ability to get financing to the point where they're requiring unreasonable amounts of cash, in some cases, 100% to be set aside in escrow with absolutely iron-clad language that restricts a buyer's ability to back out. So, it is impeding commerce at this point and I believe it's a needed clarification and one that we deserve because I can't imagine the intent of this language was to allow a willing buyer and a willing seller to come to an agreement before custom construction and then again at the eleventh hour decide some minor revision that couldn't be avoided that they have the right to back out.

CHAIRMAN STEVENS asked if the bank brought this to his attention.

MR. FAULKNER replied that this was pointed out by his attorney, Sandra Wicks, one of the most knowledgeable about the Common Ownership Act. It has never been litigated. "The problem is that the probability, as low as it might be, times the risk of it happening is absolutely still disproportional..."

He said it may happen once in a million years, but that one time it's going to happen, it's going to devastate the developer.

CHAIRMAN STEVENS asked if anyone had had a problem with this that

he knew of.

MR. FAULKNER said he didn't know of anyone, but he thought it was a "prudent precaution."

SENATOR LEMAN moved to pass CSHB 470(L&C)(title am) out of committee with individual recommendations and the accompanying fiscal note. There were no objections and it was so ordered.

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#HB306

HB 306-EUTHANASIA FOR DOMESTIC ANIMALS

CHAIRMAN STEVENS announced HB 306 to be up for consideration.

REPRESENTATIVE LANCASTER, sponsor of HB 306, said in Alaska the animal control agencies do not have the authority to purchase, possess or use certain drugs to perform the most humane method of euthanasia for domestic animals. Right now a veterinarian has to be called to do this or the animal would have to be taken to a veterinarian facility. If an animal is brought in suffering, nothing can be done until the vet gets there and this could take hours. If HB 306 were to pass, injured animals would not have to suffer these hours and the process would be more humane. During business hours a veterinarian might be busy with other animals and unable to respond immediately or sometimes there isn't one available in small villages, which have access to veterinarians only occasionally and have to resort to harsher methods of euthanasia. If an animal is brought in in the middle of the night, it would take longer for a vet to respond. Pet owners would still have the option of bringing their animals to a vet.

The goal of HB 306 is not to take business away from veterinarians, but to provide a more humane cost-effective method to treat sick or abandoned animals. Not only would it be more efficient and humane, it will also save municipalities money. With the fiscal situation the state is in, finding areas to save money is essential. In the Mat-Su alone, the animal shelter is spending \$34,000 and up per year to contract for the service with the local veterinarian.

In Fairbanks, it costs up to \$85 per case. He said that agencies in this program will be under the self sufficiency act, so this would not cost the state of Alaska any money. Agencies wishing to apply will have certain guidelines to follow in order to obtain and keep these permits. Those who will be administering these drugs will have completed a euthanasia technician certification course that is approved by the National Animal Control Association, the American Humane Association, and Public Humane

Society of the United States.

Testimony in the House revealed that there were concerns that drugs would be available to untrained individuals, but any agency that applies for the permit will have to follow the rules in effect for possession of drugs for veterinarians. They will have to be kept under lock and key and licensed supervision. The DEA has indicated there has been very few investigations of these drugs and those were because of improper storage. Thirty-one other states have laws allowing animal control leagues to use the right to apply for a permit to purchase, possess and use drugs for euthanasia of domestic animals.

MS. SHANA ANDERSON said she has been the animal control officer in Valdez for almost 13 years and she is also the president of the Alaska Animal Control Association. She supported HB 306, explaining that right now she has a very good working relationship with a veterinarian, but that isn't always the case. Other agencies have had problems being able to purchase drugs. "Anyone in this field who performs euthanasia are professional people, they're compassionate people..."

MS. ANDERSON said that she wished she could be put out of business and that euthanasia wasn't needed. Many times it is necessary because animals don't have homes.

MS. LAURA HOOD, Manager, Fairbanks North Star Borough, Division of Animal Control, supported HB 306.

Unfortunately, thousands of animals are euthanised in shelters in the state of Alaska each year. This bill allows animal shelter workers to legally purchase, maintain and use the drug which is accepted as the best euthanasia method that we have available to us. This bill will save municipalities money as they become able to purchase these drugs directly from the manufacturers. They will no longer have to rely on the services of a veterinarian to purchase or administer the drug, which can cause the municipalities thousands of dollars each year. It will protect veterinarians by removing responsibility of these drugs when used in animal shelters from the veterinarians and placing it with the animal sheltering agencies. It will allow communities without veterinarians to practice modern, safe and humane animal control. It will allow humane euthanasia for injured pets in emergencies that may occur day or night. The euthanasia technician certification requirement will set a state wide standard for the level of care that pets receive in their last moments of life and will raise the level of

professionalism in animal control workers providing this service. I really urge you to support this bill. Thanks.

MR. BRETT REID, Kenai Animal Shelter, supported HB 306. He wanted to clarify that the "tool" they need to conduct euthanasia is basically a controlled overdose that does require some training. The course for using it is offered 20 times in the coming year and will probably be offered in Juneau, as well. The federal record keeping is pretty well established, so the wheel doesn't have to be reinvented on that issue. This is not a blank ticket to buy drugs as the bill lists specific ones that can be used.

MS. MARIANNE CLARK, Soldotna Animal Shelter, said she had been in this field for over 25 years and supported HB 306. "This is a very important tool for us to use. It is the most humane method of euthanising the animals..."

MS. NANCY BUCKMASTER, Sitka Animal Control Officer, said she runs the animal shelter and is the euthanasia technician. She has been certified for almost four years and has a good working relationship with the two veterinarians that work there. She supported this bill. She said it's more of a timing issue for those that have good working relationships with veterinarians. If she is not able to get drugs when she needs them, the process has to wait.

Anyone who performs euthanasia usually has to be mentally ready and when those tools are not available for us, we then again have to redo our mental state and get prepared again to euthanise an animal. It's not an easy process, but the timing has to be there. I would ask that you support this bill for not only us, but all the smaller communities that are in the Alaska area.

MS. HAVA LEE, Executive Director, Juneau Gastineau Humane Society, supported HB 306. She said that everyone in this business knows that euthanasia is a difficult topic, but it is part of their job and there is training available. The procedure is not to be taken lightly. There is nothing in the bill that says that organizations would have to discontinue using a veterinarian for this service and probably in Juneau they would continue. This bill provides options that allow qualified individuals to have access to euthanasia drugs. In instances where a veterinarian is not available, this could mean the difference between a humane death or hours or even days of endless agony for an animal. Supporters of this bill including humane societies and animal shelters and animal control officers throughout the state do not see this bill as a cheap way to reduce the animal populations. Animal organizations have an

aggressive spay and neuter program. Humane societies and animal shelters do not create domestic over populations, but they are responsible for dealing with the problems of pets when they populate too much.

In Juneau, as in most if not all animal shelters, animals are euthanised if there is no possibility that they will be adopted. We do euthanise animals that are severely injured, old and too sick to recover and/or vicious and like most animal welfare organizations, we go out of our way to find homes for adoptable animals. We do not have a list of people who want to adopt a 17-year old cat that sprays and has diabetes. That's just the reality.

TAPE 02-17, SIDE B

MS. CATHERINE REARDON, Director, Division of Occupational Licensing, said her division staffs the Veterinary Board. She has reviewed and worked with the sponsor so they would be able to administer the bill if it passes and she didn't have any technical problems with it.

MS. REARDON said that the Veterinary Board is not totally comfortable with the bill, because they are concerned about whether there would be sufficient insurance that the euthanasia drugs would be kept secure in community settings. They are also concerned about "pre-medication," meaning that sometimes animals need to be given a soothing drug before they can be euthanised because they are agitated by their situation. They are concerned about those drugs having potentials to become street drugs.

SENATOR DAVIS asked if the Board of Veterinarians brought this up on the House side.

MS. REARDON replied that she thought it was mentioned in House Labor and Commerce.

SENATOR AUSTERMAN asked if the concern of the Board was that the control of the drug was not going to be tight enough.

MS. REARDON replied yes.

SENATOR AUSTERMAN asked if it was true that veterinarians controlled the drug now and there is no problem.

MS. REARDON replied yes. DEA has rules about tracking the drugs and locking them up and things like that. The veterinarians' DEA permits are on the line if they don't adhere to those

regulations.

SENATOR AUSTERMAN said he assumed that municipalities would fall under those same rules.

MS. REARDON said she thought the concern was with the smaller communities who might not have the resources or staff to adhere to all the requirements.

SENATOR TORGERSON moved to pass CSHB 306 (L&C) out of committee with individual recommendations and accompanying fiscal note. There were no objections and it was so ordered.

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#HB389

HB 389-MUNI TAX EXEMPTION: DETERIORATED PROPERTY

CHAIRMAN STEVENS announced HB 389 to be up for consideration.

REPRESENTATIVE VIC KOHRING, sponsor of HB 389, said it is an amendment to Title 29 that would allow for certain types of property exemptions that would enable deteriorated properties that are subject to rehabilitation to have greater odds in terms of financing of those properties. He said the McKay Building in downtown Anchorage had been an eyesore for many years and had been purchased by Marlow Development Corporation, which was attempting to upgrade the building, but they need more financing. This legislation would enable them and other similar properties to obtain that financing, because a tax exemption puts them in better position to get dollars from investment institutions.

This bill actually adds to the existing law on properties that are granted a tax exemption. In 1996-97 a bill was passed addressing this issue, but it sunsets on July 1, 2002. Instead of extending the sunset this legislation deletes the sunset clause.

SENATOR LEMAN said he understands the reasons behind this legislation and asked why he didn't just extend the sunset date.

REPRESENTATIVE KOHRING replied that his original legislation had a time certain of 2005, but the Community and Regional Affairs Committee amended the legislation and they felt it was better to drop the exemption.

MR. MIKE KRIEBER, Staff to Representative Kohring, agreed and said they did the same thing a few years ago when it came through. Representative Halcro had put in language relating to local community control that he felt were adequate so no one would receive unfair economic benefit - the rationale the committee used to remove the sunset extension that Representative Kohring's original bill proposed.

SENATOR AUSTERMAN asked if AS 29.45.05 actually exempts deteriorated buildings and does it go on until the renovation is completed.

MR. MARC MARLOW, Marlow Development Corporation, said the goal of the previous legislation was to develop a way for local communities to extend property tax relief to deteriorated properties for up to five years of an outright exemption followed by up to five years of deferred property taxes. This would provide flexibility in financing a renovation. The local assembly must first by ordinance designate a property that would benefit from this statute as a deteriorated property and the developer could request exemptions based on need. The mayor and assembly would then approve it or reject it.

SENATOR TORGERSON said he, like Senator Leman, wanted a date certain.

SENATOR DAVIS moved to pass CSHB 389(CRA) from committee with individual recommendations and the attached fiscal note. There were no objections and it was so ordered.

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CHAIRMAN STEVENS adjourned the meeting at 2:50 p.m.