

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 5, 2008

1:54 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair
Senator Lesil McGuire
Senator Gene Therriault

COMMITTEE CALENDAR

SENATE BILL NO. 273

"An Act relating to cruelty to animals and promoting an exhibition of fighting animals."

HEARD AND HELD

CS FOR HOUSE BILL NO. 163(JUD)

"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 273

SHORT TITLE: CRUELTY TO ANIMALS

SPONSOR(S): SENATOR(S) WIELECHOWSKI

02/15/08	(S)	READ THE FIRST TIME - REFERRALS
02/15/08	(S)	JUD
02/27/08	(S)	JUD AT 1:30 PM BELTZ 211
02/27/08	(S)	Scheduled But Not Heard
03/05/08	(S)	JUD AT 1:30 PM BELTZ 211

BILL: HB 163

SHORT TITLE: PROPERTY FORECLOSURES AND EXECUTIONS

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/28/07	(H)	READ THE FIRST TIME - REFERRALS
02/28/07	(H)	L&C, JUD
03/30/07	(H)	L&C AT 3:00 PM CAPITOL 17

03/30/07 (H) -- MEETING CANCELED --
04/20/07 (H) L&C AT 3:00 PM CAPITOL 17
04/20/07 (H) Moved CSHB 163(L&C) Out of Committee
04/20/07 (H) MINUTE(L&C)
04/23/07 (H) L&C RPT 1DP 4NR
04/23/07 (H) DP: RAMRAS
04/23/07 (H) NR: BUCH, LEDOUX, NEUMAN, OLSON
04/27/07 (H) JUD AT 1:00 PM CAPITOL 120
04/27/07 (H) Heard & Held
04/27/07 (H) MINUTE(JUD)
04/30/07 (H) CORRECTED L&C RPT CS(L&C) NT 1DP 4NR
04/30/07 (H) DP: RAMRAS
04/30/07 (H) NR: BUCH, NEUMAN, LEDOUX, OLSON
04/30/07 (H) JUD AT 1:00 PM CAPITOL 120
04/30/07 (H) Moved CSHB 163(JUD) Out of Committee
04/30/07 (H) MINUTE(JUD)
05/01/07 (H) JUD RPT CS(JUD) NT 3DP 4NR
05/01/07 (H) DP: GRUENBERG, LYNN, RAMRAS
05/01/07 (H) NR: COGHILL, DAHLSTROM, SAMUELS, HOLMES
05/05/07 (H) TRANSMITTED TO (S)
05/05/07 (H) VERSION: CSHB 163(JUD)
05/07/07 (S) READ THE FIRST TIME - REFERRALS
05/07/07 (S) JUD, FIN
03/05/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

KATHERINE PUSTAY, Staff
to Senator Wielechowski,
POSITION STATEMENT: Introduced SB 273 on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau, AK
POSITION STATEMENT: Voiced concern with provisions of SB 273.

JANE PIERSON, Staff
to Representative Ramras
Alaska State Capitol
Juneau, AK
POSITION STATEMENT: Introduced HB 163 on behalf of the sponsor.

DENNIS FENERTY, Attorney at Law
Groh Eggers, LLC
Anchorage, AK
POSITION STATEMENT: Offered suggestions on HB 163.

STEPHEN ROUTH, Attorney at Law
Routh Crabtree, APC
Anchorage, AK

POSITION STATEMENT: Offered perspective on HB 163.

SABRINA FERNANDEZ, Attorney at Law
Default Services Alaska (DSA)
Anchorage, AK

POSITION STATEMENT: Offered suggestions on HB 163.

DAN NICHOLSON, representing himself
As a private real estate investor
Anchorage, AK

POSITION STATEMENT: Offered suggestions on HB 163.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:54:03 PM](#). Present at the call to order were Senators French and Wielechowski.

SB 273-CRUELTY TO ANIMALS

CHAIR FRENCH announced the consideration of SB 273.

[1:54:55 PM](#)

KATHERINE PUSTAY, staff to Senator Wielechowski, sponsor of SB 273 said the bill seeks to increase penalties for the most heinous acts of animal cruelty and criminalize participation in animal fights. Currently in Alaska a person can torture or poison an animal and only be charged with a misdemeanor. The bill won't change the penalty for causing injury to an animal due to criminal negligence. Currently, 44 states and the District of Columbia have enacted felony-level penalties for heinous acts of animal cruelty. Alaska ranks among the weakest with respect to animal protection.

MS. PUSTAY said that research indicates that without intervention, people who abuse and kill animals are more likely to also abuse humans. Over 70 percent of pet owners that enter domestic violence shelters indicate that their batterer threatened, injured, or killed family pets. Many abusers have a history of abusing animals that precedes domestic violence toward their partner. Hopefully, she said, the committee will also discuss ways to strengthen the application toward domestic violence cases. Animal cruelty has been found to be an indicator

for predicting which children subsequently will exhibit antisocial and/or aggressive behavior. Serial and school killers frequently have histories of animal abuse. She highlighted the wide ranging support for the bill. "We believe that passage of felony-level animal cruelty is critical in halting the progression of violent crime," she said.

MS. PUSTAY referred to the issue of proportionality that the Department of Law raised during the previous hearing, and said the sponsor believes that there is an issue with the way domestic violence cases are prosecuted. The way the statute is written, a person who "knowingly inflicts severe and prolonged physical pain or suffering on an animal" is committing an offense that is similar to assault in the first degree. The penalty for first degree assault on a person is a class A felony. SB 273 says that same level of assault on an animal is a class C felony. We don't intend to suggest that crimes against animals should be punished the same as crimes against humans, but we do want to say that torturing an animal is not acceptable in this state, she said.

1:57:28 PM

CHAIR FRENCH asked her to elaborate on the link between animal cruelty and domestic violence.

MS. PUSTAY referred to a fact sheet in the packet from the National Coalition Against Domestic Violence (NCADV) citing numerous studies that indicate there's an overlap.

CHAIR FRENCH asked if abusers sometimes use pets as a proxy for abusing a spouse.

MS. PUSTAY said she understands that threatening violence toward a pet is oftentimes used to exert control over another person.

1:59:20 PM

SENATOR WIELECHOWSKI provided statistics that he finds startling. NCADV reports that 71 percent of pet owners who enter domestic violence shelters report that their batterer threatened, hurt, or killed family pets; one study found that 87 percent of batterers perpetrated pet abuse in the presence of their partner for the purpose of exerting control; and up to 76 percent of batterers perpetrated pet abuse in the presence of children. "There's a staggering correlation ... between pets and domestic violence - unfortunately so," he said.

SENATOR WIELECHOWSKI, responding to a question from Senator French, explained that currently there are 4 provisions that apply to animal cruelty: torturing an animal, criminal negligence of an animal, killing or injuring an animal by use of a decompression chamber, and injuring or killing an animal with poison. Torturing or intentionally inflicting prolonged pain and suffering on an animal should be punished by more than a \$100 fine; it should send a clear message that it won't be tolerated. The policy choice was to make torture, use of a decompression chamber, and poisoning of an animal a felony offense.

[2:02:11 PM](#)

CHAIR FRENCH mentioned the difference between the penalties for AS 11.61.140(a)(2) and the statute on promoting an exhibition of fighting animals.

SENATOR WIELECHOWSKI highlighted that promoting or exhibiting a fighting animal is currently a class C felony and in many states it's either a misdemeanor or felony to be a spectator. This bill says promoting an exhibition of fighting animals is a class A misdemeanor for a first offense and a class C felony for each subsequent offense.

[2:03:26 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, said the department has serious concern with raising animal cruelty from a class A misdemeanor to a class C felony. Animal cruelty is shocking and despicable and it's obviously related to domestic violence, but DOL believes that one year in jail is enough for that conduct. She noted that for practical reasons, most domestic violence charges against humans are resolved as class A misdemeanors. Alaska prosecutors try 5 percent of the cases that are brought, which is the highest in the nation, and 95 percent of the cases are resolved. Considering the proportionality of penalties for injury to people, this bill would send the wrong message, she said. The increased penalty would also put prosecutors in a more difficult position with respect to allocating resources.

CHAIR FRENCH asked how many prosecutions the DOL does each year for animal cruelty. At a future hearing he'd like to hear anecdotes about the range of severity in cases.

MS. CARPENETI agreed to get the information. She reminded members that the statute allows a separate charge for every animal that is mistreated, and the sentences could be served consecutively.

[2:06:42 PM](#)

CHAIR FRENCH said he'd also like to know the longest sentence ever imposed when animal cruelty is the only charge. The sponsor's point is that in the most heinous cases, having a bigger hammer has advantages.

MS. CARPENETI pointed out that the mandatory minimum for a second domestic violence related fourth degree assault is 30 days. The mandatory minimum for a third domestic violence related fourth degree assault is 45 days. The penalty range for a first class C felony conviction is zero to two years. Conceivably the sentence for a felony level cruelty to animals could be less than that, but it's unlikely, and the message it sends is a concern, she said.

CHAIR FRENCH said this bill would make it a class C felony to knowingly inflict severe and prolonged physical pain or suffering on an animal, and he believes that doing that to a human being would be assault in the first degree. That's a class A felony, and the penalty is up to 20 years in prison.

MS. CARPENETI clarified that she's talking about the practical reality rather than the penalty that's on the books.

CHAIR FRENCH agreed that someone would make that point, but the reciprocal point is that the parallel harm to a human is 20 years in prison.

MS. CARPENETI said the statutes don't match exactly because the assault statutes talk about injury and the cruelty to animals statutes talk about pain and suffering. That's interesting in itself, she said, because you don't know.

CHAIR FRENCH responded we'd know it when we looked at the injuries to the animal, the photographs, and the weight of the animal.

MS. CARPENETI added that proving prolonged pain and suffering is more difficult. The statutes don't really match because for assault you must prove injury, serious physical injury, or physical injury.

[2:09:40 PM](#)

SENATOR WIELECHOWSKI remarked that after many discussions he still doesn't understand why the administration doesn't support the bill. He agreed with the Chair that the similar sort of

assault to a human being would be a class A felony, and a potential prison sentence of 20 years. He surmised that poisoning or putting a human being in a decompression chamber would be an unclassified felony so he disagrees with the proportionality argument. Also, if someone were to slash and destroy another person's picture or painting of a beloved pet, that is a class C felony, but if the same person inflicted the same damage on the pet, that would only be a misdemeanor under current law. "There's no proportionality there so I respectfully disagree with the ... administration on this matter," he said.

MS. CARPENETI responded that the criminal laws aren't perfect; the \$500 felony threshold for a class C felony is nearly 30 years old and it's worth discussion.

CHAIR FRENCH announced he would hold public testimony open so that the full committee could hear from the public. He set SB 273 aside.

CSHB 163(JUD)-PROPERTY FORECLOSURES AND EXECUTIONS

CHAIR FRENCH announced the consideration of HB 163

[2:12:28 PM](#)

JANE PIERSON, staff to Representative Ramras, sponsor of HB 163, reminded committee members that they heard the companion bill, SB 18. She explained that HB 163 will clarify and modernize the antiquated and ambiguous statutes on non judicial property foreclosures. The hope is that more open and accessible foreclosure auctions will benefit borrowers, lenders, title insurers, individuals, and neighborhoods, and help soften the impact that foreclosures can have on an economy. Best practices from 11 other states were used to draft the bill. She noted that banks in Alaska currently lose about \$20,000 per foreclosure sale.

CHAIR FRENCH asked if someone could elaborate on where the loss comes from. Ms. Pierson deferred the question to Stephen Roath.

MS. PIERSON highlighted that HB 163 would improve the foreclosure process by making the following changes:

- Clarify how the proceeds from a foreclosure auction can be distributed.
- Assure that foreclosure trustees are fiscally responsible by imposing reasonable bond requirements.
- Create deadlines to deter unnecessary delays.

- Allow trustees to nullify sales when mistakes have been made that would negatively affect the integrity of a sale.
- Establish procedures involving deceased borrowers.
- Create rules to govern times and methods for posting foreclosure sales.
- Create Internet publication procedures.
- Define when rights are terminated in the foreclosure process.
- Allow acceptance of foreclosure auction bids via email, Internet, and telephone.

[2:16:03 PM](#)

SENATOR WIELECHOWSKI asked if there are significant differences between HB 163 and the companion Senate bill that the committee heard last year.

MS. PIERSON replied one of the few differences is in Section 4, which sets a time limit to cure a default of up to two days before the sale rather than five days. Other than that, there were no substantive changes.

DENNIS FENERTY, Attorney at Law, Groh Eggers, LLC, said he has represented lenders for 23 years and has been involved in many foreclosure sales. HB 163 is a good bill, but he has concern with Section 2 related to Internet advertizing of foreclosure sales. As presently written, the qualifications for the Internet websites would exclude the Anchorage Daily News (ADN) and the Alaska Journal of Commerce (AJC) because neither of those classified ad websites is used primarily to advertize real property under foreclosure. Both sites are instead generally used for all classified advertizing. Disqualifying those would not be a good outcome. It's in the best interest of both the lender and the borrower to have competing websites because that tends to reduce advertizing costs. "That certainly was the case when the Alaska Journal of Commerce was recognized as an acceptable publication for newspaper ads," he said.

[2:19:59 PM](#)

MR. FENERTY said he has no idea whether the required 5,000 visits per month is realistic for either of the aforementioned papers. But as an attorney who represents lenders and conducts foreclosures, he is interested in having a site where he can place the required Internet advertizing. He suggested the committee amend Section 2 by striking subsection (c)(3), and reducing the required visits in subsection (c)(5) so that present advertisers would qualify.

CHAIR FRENCH asked Ms. Pierson if she wanted to address either issue. She deferred to Mr. Roath for a response.

2:21:47 PM

SABRINA FERNANDEZ, Attorney at Law, Default Services Alaska (DSA), said she has done many foreclosure sales over the years. The title company she currently works for recently formed DSA to act as a trustee to conduct non judicial foreclosure sales. She is testifying today to object to Section 2 because it will make it difficult for new companies, like DSA, to act as trustees. The Internet publication conditions under subsection (c)(4) and (5) become onerous for newspapers and servicers such as AHFC, banks, title companies and attorneys. None of those business websites could be used to get foreclosure sale information out to the public so that more people would attend a sale. She surmised that no website other than Alaska Trustees would qualify for the Internet publication conditions. Other qualifications could be established to readily allow other websites to pop up using simple Google-type searches, she said.

CHAIR FRENCH asked Mr. Routh to address the concerns voiced about Section 2 in addition to his overall view of the bill.

2:24:44 PM

STEPHEN ROUTH, Attorney at Law, Routh & Crabtree, APC, stated support for HB 163. He's conducted many foreclosure sales over the years and has the perspective of the Alaska market and seven other states. This bill is an attempt to do best practice legislation and take innovative steps with regard to foreclosures.

MR. ROUTH explained that the qualifications in Section 2 mirror the minimum circulation requirements that currently apply to newspapers. Those are in current statute, he said. The requirement to have 5,000 visitors each month isn't a lot. He suspects that four or five websites would qualify now, and more will follow. He pointed out that the newspapers won't be impacted because this doesn't remove the requirement for the printed publication as part of the foreclosure process. The Anchorage Daily News and the Alaska Journal of Commerce, for example, will derive fees from print media and they'll continue to place ads on the Internet without mandate. The only thing that changed in that area is that companies that specialize in getting the message out to prospective bidders will be encouraged to step into the market.

[2:28:03 PM](#)

CHAIR FRENCH asked if this bill is the same as the one Senator Bunde introduced and the committee heard last year.

MR. ROUTH said it's the same with the exception of the two areas of change that Ms. Pierson identified. The reinstatement period was shortened from five days to two days and the other change occurs in Section 5. The term "grantor" was changed to "trustor" for consistency.

[2:29:22 PM](#)

DAN NICHOLSON, representing himself as a private real estate investor from Anchorage, said he has invested in foreclosures for about 10 years. In addition to buying and selling foreclosed real estate at tax sales and trustee sales, he's also acted as a trustee in a trustee foreclosure sale. Referring to Section 2 of the bill, he noted that the notice of a sale must be posted in three public places, but it doesn't define what a public place is. That should be spelled out, he said. Posting at the courthouse ought to be one of the requirements and the post office might still be a possible option. Turning to the Internet website requirements, he said he doesn't know if Mr. Routh mentioned that he owns a website that, as it happens, is probably the only one that would meet the qualifications in this bill. For that reason he questions whether the qualifications would do anything other than enhancing that business.

[2:33:13 PM](#)

MR. NICHOLSON suggested expanding the Alaska online public notice website to include the mandatory public foreclosure notices. He reviewed the new provisions to AS 34.20.080(a) in Section 7, and said he doesn't see how it will be possible to have a courthouse auction and also take bids by telephone, the Internet, and electronic mail. Keeping all the bidders abreast of what's happening seems unworkable in this kind of environment. He suggested that the requirement to take bids by phone, Internet, and electronic mail should either be deleted or amplified so the procedure is a matter of law.

[2:36:52 PM](#)

MR. NICHOLSON referred to Section 10 and said he's pleased that the procedures for distributing the cash proceeds of a sale according to priority will become a matter of statute. His concern relates to the trustee having to find and inform the various parties that there are excess proceeds. The notice could include a clause that the parties need to check on whether or not there are excess proceeds. The parties of interest have all

been notified so perhaps the various note holders, lien holders, mortgage holders, and beneficiaries of the trustee should be given a certain statutory time in which to submit a claim. That could be an additional clause in the notice.

2:40:45 PM

MR. NICHOLSON turned to AS 34.20.080(f)(3), Section 10, that says "the trustor's successor in interest whose interest appears of record at the time of the foreclosure sale," and observed that, as a matter of law, a deed doesn't need to be recorded in order to be effective. Recording does establish a priority of claim. A trustor could sell his or her interest in the property for consideration, but that interest may not be recorded before the foreclosure sale so he'd like "appears of record" to be struck.

2:44:20 PM

MR. NICHOLSON said Section 13, which amends AS 34.20, by adding section .125, deals with the required trustee bond. When he was a trustee he had no difficulty doing the foreclosure and he doesn't believe there is a need to require a surety bond.

MR. NICHOLSON observed that distribution of excess proceeds isn't addressed in the bill.

CHAIR FRENCH asked him to email his suggestions for possible inclusion in the bill as an amendment.

MR. NICHOLSON agreed to do so.

CHAIR FRENCH asked Mr. Routh if he'd like to address the points that Mr. Nicholson raised.

2:48:16 PM

MR. ROUTH mentioned the request for a definition for public place and said that the statute currently mandates posting in a post office and two other places. This bill removes the post office requirement because postings are often no longer allowed there. Since post office regulations and state law don't comply, this cleans up that area of existing statute. With respect to Section 2 and providing notice on an Internet website, he said he doesn't own or know about the website Mr. Nicholson mentioned. He explained that the Internet advertizing process is intended to widen the potential pool of individuals who would show up at an auction. That works to everyone's benefit because any funds that are left over go to the borrower. He believes that the more notice the better, the wider the audience the

better, and the higher the bids the better. If the price goes beyond the cost of the foreclosure and the amount that is due the excess money goes to the borrower.

With respect to the concern that was voiced about escrow funds in Section 7, he said the goal of trustees should be to maximize bidding at the sale for the protection and benefit of the borrower. As a trustee you should take every opportunity to get bids in and qualified. This will make it a more reasonable, open, efficient, and transparent process.

[2:51:48 PM](#)

CHAIR FRENCH clarified that he is saying a trustee would have the obligation to lay out the ground rules before the sale and if telephone bids are going to be accepted, they'd be accepted by anyone provided he or she could make the money immediately available for disbursement.

MR. ROUTH agreed. He sees no reason why someone in New York can't bid on property in Homer. "Anybody can bid from anywhere as long as it's cleared funds that are available [and there is] a process for the funds to be brought in in a fair, open, and competitive process."

SENATOR WIELECHOWSKI asked how many other states allow telephone or Internet bidding.

MR. ROUTH replied he believes some states allow bids by telephone with similar protection language with regard to cleared funds being available. This would probably be a first for allowing Internet bidding, he said.

MR. ROUTH said Section 10 relates to title insurers in Alaska and the bill proposes a common-sense way for handing out funds after a sale. This would take away the opportunity to litigate on who gets the money. With respect to the comment that it wouldn't be fair that an unrecorded interest wouldn't be aware of a foreclosure process, he said that's how equity skimmers operate and it's not a good thing. Anyone who takes a deed from a homeowner in distress should make a legitimate deal and record that deed. "Don't hide the deed and then claim foul that you somehow didn't get notice of the sale because you hid your interest," he said.

[2:55:07 PM](#)

MR. ROUTH said the thinking is similar for trustee bonds in Section 13. Trustee defalcation hasn't happened in Alaska yet,

but it will, he said. There's no requirement that funds be placed in a trust account or escrowed and there's no requirement of a bond so it's open season for hurting someone. This bill seeks to get ahead of that happening. The suggested language is the result of conversations with bonding companies about reasonable cost and what would work in this environment.

CHAIR FRENCH asked if there's a model act on this topic.

MR. ROUTH said not that he's found.

SENATOR WIELECHOWSKI asked who typically acts as a trustee and if this potentially hurts small businesses that couldn't get a \$250,000 bond.

MR. ROUTH replied he doesn't believe this would hurt anyone. Title companies, attorneys, and law firms typically serve as trustees. Being a trustee is nothing to step into lightly. Valuable rights that are conveyed away in this process and there ought to be some minimum level of competence.

[2:57:49 PM](#)

CHAIR FRENCH asked what the cost might be to obtain a bond.

MR. ROUTH recalled that it wasn't at all onerous.

CHAIR FRENCH assumed that the requirement would apply to anyone who wants to be a trustee.

MR. ROUTH said title insurers are exempt. They're already licensed by the state to issue title insurance, and that's probably why they have a statutory waiver on the escrow bond. There are no other exceptions.

SENATOR WIELECHOWSKI observed that currently he could help a friend by serving as a trustee, but if this passes he'd need to pay \$5,000 for the surety bond.

MR. ROUTH said if he's representing his friend as the beneficiary, the way it typically works now is that the title insurance company would be the trustee in the foreclosure sale.

[3:00:15 PM](#)

MR. FENERTY commented that the trustee is tasked with duties to the lender and the borrower and therefore is supposed to fairly fulfill the duties under the deed of trust in both directions. As an attorney he represents the lender, and he would rarely if

ever agree to be a trustee because he doesn't want to owe duties in both directions. It's his practice to use title companies to act as a trustee.

MR. FENERTY highlighted that three witnesses voiced concern about the requirements for an Internet website and that it's likely that not a single site in Alaska qualifies. He said he knows that Mr. Routh has a regional multi-state site that may qualify. He asked the committee to pay attention and make sure that not just one site qualifies, effectively shutting out competition.

CHAIR FRENCH held HB 163 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at 3:02:04 PM.