

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 4, 2012

1:35 p.m.

**MEMBERS PRESENT**

Representative Carl Gatto, Chair  
Representative Steve Thompson, Vice Chair  
Representative Wes Keller  
Representative Bob Lynn  
Representative Lance Pruitt  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Mike Hawker (alternate)

**COMMITTEE CALENDAR**

CS FOR SS FOR SENATE BILL NO. 82(JUD)

"An Act relating to the procedures and jurisdiction of the Department of Health and Social Services for the care of children who are in state custody; relating to court jurisdiction and findings pertaining to children who are in state custody; and modifying the licensing requirements for foster care."

- MOVED HCS CSSSSB 82(HSS) OUT OF COMMITTEE

HOUSE BILL NO. 269

"An Act relating to the amendment of a declaration that creates a common interest community."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 82

SHORT TITLE: FOSTER CARE LICENSING/STATE CUSTODY

SPONSOR(S): SENATOR(S) DAVIS

02/04/11	(S)	READ THE FIRST TIME - REFERRALS
02/04/11	(S)	HSS, JUD
03/11/11	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
03/11/11	(S)	HSS, JUD

03/14/11 (S) HSS AT 1:30 PM BUTROVICH 205  
 03/14/11 (S) Heard & Held  
 03/14/11 (S) MINUTE(HSS)  
 03/16/11 (S) HSS AT 1:30 PM BELTZ 105 (TSBldg)  
 03/16/11 (S) Moved CSSSSB 82(HSS) Out of Committee  
 03/16/11 (S) MINUTE(HSS)  
 03/18/11 (S) HSS RPT CS 5DP SAME TITLE  
 03/18/11 (S) DP: DAVIS, MEYER, ELLIS, EGAN, DYSON  
 03/30/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/30/11 (S) Heard & Held  
 03/30/11 (S) MINUTE(JUD)  
 04/01/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 04/01/11 (S) Moved CSSSSB 82(JUD) Out of Committee  
 04/01/11 (S) MINUTE(JUD)  
 04/04/11 (S) JUD RPT CS 5DP SAME TITLE  
 04/04/11 (S) DP: FRENCH, COGHILL, WIELECHOWSKI,  
 PASKVAN, MCGUIRE  
 04/07/11 (S) TRANSMITTED TO (H)  
 04/07/11 (S) VERSION: CSSSSB 82(JUD)  
 04/08/11 (H) READ THE FIRST TIME - REFERRALS  
 04/08/11 (H) HSS, JUD  
 04/14/11 (H) HSS AT 3:00 PM CAPITOL 106  
 04/14/11 (H) -- MEETING CANCELED --  
 03/22/12 (H) HSS AT 3:00 PM CAPITOL 106  
 03/22/12 (H) Moved HCS CSSSSB 82(HSS) Out of  
 Committee  
 03/22/12 (H) MINUTE(HSS)  
 03/23/12 (H) HSS RPT HCS(HSS) 5DP 1NR  
 03/23/12 (H) DP: MILLER, SEATON, DICK, MILLETT,  
 KERTTULA  
 03/23/12 (H) NR: KELLER  
 04/04/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 269

SHORT TITLE: COMMON INTEREST COMMUNITIES

SPONSOR(S): REPRESENTATIVE(S) HOLMES

01/17/12 (H) PREFILE RELEASED 1/13/12  
 01/17/12 (H) READ THE FIRST TIME - REFERRALS  
 01/17/12 (H) L&C, JUD  
 03/14/12 (H) L&C AT 3:15 PM BARNES 124  
 03/14/12 (H) Heard & Held  
 03/14/12 (H) MINUTE(L&C)  
 03/30/12 (H) L&C AT 3:15 PM BARNES 124  
 03/30/12 (H) Moved Out of Committee  
 03/30/12 (H) MINUTE(L&C)  
 04/02/12 (H) L&C RPT 5DP 1NR

04/02/12 (H) DP: THOMPSON, SADDLER, HOLMES, MILLER,  
OLSON  
04/02/12 (H) NR: JOHNSON  
04/04/12 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

CELESTE HODGE, Staff  
Senator Bettye Davis  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented SSSB 82 on behalf of the sponsor,  
Senator Davis.

CHRISTY LAWTON, Director  
Central Office  
Office of Children's Services (OCS)  
Department of Health and Social Services (DHSS)  
Fairbanks, Alaska

**POSITION STATEMENT:** Provided comments and responded to  
questions during discussion of SSSB 82.

AMANDA METIVIER, Statewide Coordinator  
Facing Foster Care in Alaska (FFCA)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SSSB 82.

REPRESENTATIVE LES GARA  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During discussion of SSSB 82, responded to  
a question as one of the joint prime sponsors of the House  
companion bill.

JAMES R. WALDO, Staff  
Representative Lindsey Holmes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Assisted with the presentation of HB 269 on  
behalf of the sponsor, Representative Holmes.

JAMES H. McCOLLUM, Attorney at Law  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of  
HB 269.

ROBERT C. PETERSEN, Director & President

The Petersen Group, Inc.  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 269.

JOE BEEDLE, President & CEO  
Northrim Bank;  
President  
Alaska Bankers Association (ABA)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in favor of HB 269.

#### **ACTION NARRATIVE**

[1:35:29 PM](#)

**VICE CHAIR STEVE THOMPSON** called the House Judiciary Standing Committee meeting to order at 1:35 p.m. Representatives Gatto, Thompson, Keller, Pruitt, Gruenberg, Holmes, and Lynn were present at the call to order.

#### **SB 82 - FOSTER CARE LICENSING/STATE CUSTODY**

[1:36:05 PM](#)

VICE CHAIR THOMPSON announced that the first order of business would be CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 82(JUD), "An Act relating to the procedures and jurisdiction of the Department of Health and Social Services for the care of children who are in state custody; relating to court jurisdiction and findings pertaining to children who are in state custody; and modifying the licensing requirements for foster care." [Before the committee was HCS CSSSSB 82(HSS).]

[1:37:11 PM](#)

CELESTE HODGE, Staff, Senator Bettye Davis, Alaska State Legislature, on behalf of the sponsor, Senator Davis, relayed that SSSB 82 would modify various provisions of Title 47 in order to prioritize the needs of children in state custody. Among other things, SSSB 82 seeks to ensure that older children in foster care achieve what she referred to as "permanency"; permanency for a child, she went on to explain, is best achieved through reunification with the child's parent, or, failing that, through adoption or guardianship. However, she added, if none of those options are available, permanency can still be achieved through what she referred to as, "another planned permanent

living arrangement (APPLA)," and the bill, by providing guidelines for both the OCS and the court regarding when this APPLA option should be used, seeks to ensure that it is not chosen unnecessarily.

MS. HODGE explained that in addition, SSSB 82 would allow for state custody to be resumed in instances where the parents of a previously-released child [age 16 or older] are unwilling or unable to care for the child; would create a statutory presumption that siblings be placed in the same home when possible and when doing so is in their best interest, and requires documentation in instances where such placement isn't possible; would provide guidelines for a child's early release from state custody, including proper-notification requirements and stipulations that such release be in the child's best interest; would statutorily stipulate that the application process for foster parents be streamlined; would provide a variance of applicable building code requirements for certain foster care homes under certain circumstances; and would conform the statutes addressing the retention of the court's jurisdiction over a child under the age of 21, to legislation passed in 2010.

MS. HODGE, in conclusion, mentioned that SSSB 82 has a zero fiscal note.

REPRESENTATIVE LYNN questioned whether the bill also contains provision for notifying necessarily-separated siblings of each other's whereabouts.

REPRESENTATIVE GRUENBERG, mentioning that he supports SSSB 82, expressed disfavor with Section 1's proposal to establish a short title for the bill in uncodified law, and questioned whether the sponsor would object to having that provision deleted.

MS. HODGE suggested that others could better address that issue.

[1:46:32 PM](#)

CHRISTY LAWTON, Director, Central Office, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), relayed that the OCS collaborated on SSSB 82, and finds that [its passage] would be in the best interests of the children the OCS serves. In response to questions, she said that deleting Section 1's proposed short title would not have any impact on OCS staff; that much of what's contained in SSSB 82 comports

with the OCS's concept of best practices for children and families, and the OCS was already contemplating making changes to OCS policy reflective of some of the bill's proposed changes; that the adoption of SSSB 82 would enable Alaska to stay in compliance with federal law; and that the bill won't impact the OCS's ability to change its policies, most of which stem from federal guidelines.

[1:49:36 PM](#)

AMANDA METIVIER, Statewide Coordinator, Facing Foster Care in Alaska (FFCA) - noting that she is an alumni of the foster care system, having "aged out" of foster care while living in Anchorage, and is currently pursuing a master's degree in social work - relayed that the FFCA supports SSSB 82, adding that it would do a number of things to improve the lives of children in foster care. To elaborate, she, too, noted that the bill would create a statutory presumption that siblings be placed in the same home when possible; regardless that federal law already requires this of states, siblings coming into the foster care system in Alaska are still being separated. With regard to the bill's proposal to provide a variance of applicable building code requirements for certain foster care homes under certain circumstances, she indicated that this would allow more foster children from rural areas of the state to stay in their communities. Referring, then, to the bill's proposal to provide guidelines regarding the aforementioned APPLA option, she characterized this as the most important provision of the bill, one that would help foster children obtain the permanency and support they need in order to be successful later on in life.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on SSSB 82.

REPRESENTATIVE GRUENBERG observed that language in Section 3 of the bill addresses the resumption of state custody in instances where the person is completing an educational or vocational program.

[1:59:24 PM](#)

REPRESENTATIVE LES GARA, Alaska State Legislature - in response to a question, and speaking as one of the joint prime sponsors of the House companion bill to SSSB 82 - acknowledged that deleting Section 1's proposed short title would be a policy call for the committee to make.

MS. HODGE concurred.

[2:00:31 PM](#)

REPRESENTATIVE KELLER moved to report HCS CSSSSB 82(HSS) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSSSB 82(HSS) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:01 p.m. to 2:04 p.m.

**HB 269 - COMMON INTEREST COMMUNITIES**

[2:04:21 PM](#)

VICE CHAIR THOMPSON announced that the final order of business would be HOUSE BILL NO. 269, "An Act relating to the amendment of a declaration that creates a common interest community."

REPRESENTATIVE HOLMES, speaking as the sponsor, relayed that HB 269, in addressing Alaska's version of a uniform law, would clean up the statutes pertaining to the development of condominiums.

[2:05:08 PM](#)

JAMES R. WALDO, Staff, Representative Lindsey Holmes, Alaska State Legislature, on behalf of the sponsor, Representative Holmes, added that HB 269 would address a glitch in state law that can cause condominium-development projects to stall; this same glitch existed in the Uniform Common Interest Ownership Act (UCIOA) upon which Alaska's law was modeled, but has since been fixed, and HB 269 would similarly fix Alaska's law. Condominiums are developed in phases, with specific timelines for the completion of each of those phases having been agreed upon, and with any necessary adjustments to those timelines also being agreed upon. However, under current law, before a declaration - which is the instrument that creates a common interest community, such as a condominium, and in which the aforementioned timelines are specified - can be altered, 100 percent of the ["unit owners"] must agree to the proposed change, and, for a variety of reason, this is often a very difficult percentage of unit owners to get an affirmative response from when seeking permission to alter a declaration. In the UCIOA, the required percentage has been lowered to 80 percent, and the bill would similarly lower the required

percentage stipulated in Alaska law. In conclusion, he urged the committee to support HB 269.

MR. WALDO, in response to questions, explained that the term, "declarant" as used in the bill means the developer of a condominium; and that declarants - regardless that they "own" the unsold units in a condominium development and are entitled to cast votes in the unit owners' association - aren't considered to be "unit owners" for purposes of determining whether the statutorily-required percentage of affirmative votes has been obtained.

2:10:48 PM

JAMES H. McCOLLUM, Attorney at Law, in response to comments and a question, confirmed that under HB 269's proposed new AS 34.08.250(g), both 80 percent of the votes of all who are entitled to cast a vote in the association, and 80 percent of the votes of the unit owners, would be required for any proposed changes to the timelines and development rights specified in the declaration; and, in response to further comments and questions, indicated that under existing law, the votes in an association may be allocated in a variety of ways.

MR. WALDO added that the specific allocation formula chosen by the participants in a particular condominium development must be stipulated in the declaration.

REPRESENTATIVE KELLER expressed concern that under HB 269's proposed new AS 34.08.250(f), obtaining a mere 80 percent of the allocated votes would be sufficient to alter a declaration to prohibit or materially restrict the permitted uses of or behavior in a unit or the number [or other qualifications] of persons that may occupy units.

MR. WALDO said proposed new subsection (f) isn't the main thrust of HB 269.

MR. McCOLLUM indicated that the language of proposed new subsection (f) reflects additional changes made to the UCIOA by the National Conference of Commissioners on Uniform State Laws (NCCUSL), which now considers obtaining an affirmative vote of 80 percent of the allocated votes to be sufficient for those types of alterations to a declaration, adequately balancing the interests of the project and those of the individual unit owners, since even 80 percent of the allocated votes can still be a difficult percentage of affirmative votes to obtain.

REPRESENTATIVE KELLER relayed that his concern with proposed new subsection (f) has not yet been alleviated, positing that it might very well be appropriate for even one negative vote to be sufficient to preclude alterations [to a declaration that would prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons that may occupy units].

VICE CHAIR THOMPSON pointed out, however, that that one "no" vote could come from the person creating the problem that's meant to be addressed by the proposed alteration to the declaration.

MR. McCOLLUM concurred, and remarked that obtaining even 80 percent of the allocated votes signifies broad support for a proposed alteration to a declaration.

REPRESENTATIVE GRUENBERG disclosed that he owns two condominiums.

REPRESENTATIVE HOLMES, in response to comments and questions, clarified that language in proposed new AS 34.08.250(g) also stipulates that "all persons holding special declarant rights" - the developers - and all persons holding "security interests in those rights" - the lending institutions - must also all agree to any proposed alterations to the timelines and development rights specified in the declaration; that such persons would have 30 days in which to record written objection to the proposed alterations; and that barring any such objection, once the agreed-upon alterations have been recorded, they would become effective 30 days afterward unless all such persons consent in writing to having them become effective when recorded.

MR. McCOLLUM added that that language is intended to preclude a unit owners' association from making alterations to the timelines and development rights specified in the declaration without the consent of the developer and lender.

[2:30:52 PM](#)

ROBERT C. PETERSEN, Director & President, The Petersen Group, Inc. - after indicating that his company, a building and development firm, has been the declarant on numerous projects, and thus he is quite familiar with how unit owners' associations function under [Alaska's version of] the UCIOA and various types

of declarations - opined that for purposes of altering the timelines and development rights specified in a declaration, requiring agreement from 100 percent of the unit owners to address delays in project development is unreasonable, particularly given the impact various economic factors can have on the development of such a project. In conclusion, he expressed his hope that the committee would pass the bill and thereby rectify the existing problem with Alaska law.

[2:35:29 PM](#)

JOE BEEDLE, President & CEO, Northrim Bank; President, Alaska Bankers Association (ABA), mentioning that he was speaking in favor of HB 269, relayed that all members of the ABA have unanimously agreed to support the bill. Characterizing condominium developments as both important for the future because they provide communities with affordable housing, and difficult to develop, finance, and govern, he offered his beliefs that current law creates hardships for existing developments that haven't been finished on schedule, and that the adoption of the bill's proposed conforming updates to Alaska's version of the UCIOA is going to provide a solution to that problem and help with the timely development of condominiums in Alaska. In conclusion, he relayed that the ABA recommends approval of HB 269 so that the burden of financing such projects would be eased.

VICE CHAIR THOMPSON, after ascertaining that no one else wished to testify, closed public testimony on HB 269.

REPRESENTATIVE KELLER reiterated his concern with proposed new AS 34.08.250(f), and relayed that he would be amenable to deleting it from the bill.

REPRESENTATIVE HOLMES, in response to a question, relayed that according to those who drafted the bill, proposed new AS 34.08.250(f) would allow a future condominium development to initially stipulate that only 80 percent of allocated votes would be required in order to alter its declaration to prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons that may occupy units. She offered her belief that under proposed new subsection (f), an existing condominium development wouldn't automatically have to, or get to, lower the required-vote percentage, and would instead still have to first obtain 100 percent agreement before it could alter its declaration to require only 80 percent of the allocated votes. The bill simply

provides condominium developments with the statutory authority to stipulate an affirmative-vote requirement of as low as 80 percent, but does not mandate that they do so.

MR. WALDO concurred, and pointed out that language in proposed new AS 34.08.250(f) indicates that a percentage higher than 80 percent could still be stipulated in the declaration itself. The bill, he remarked in conclusion, would simply provide condominium developments with greater latitude.

REPRESENTATIVE HOLMES, in response to comments, characterized the bill's proposed affirmative-vote requirement of 80 percent as sufficiently high, particularly given that declarations would not be mandated to require only 80 percent of the allocated votes.

MR. McCOLLUM, in response to further comments and questions, added his understanding that when a condominium development does vote to alter its declaration [to prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons that may occupy units], what was permitted prior to the alteration often gets "grandfathered in."

[2:52:57 PM](#)

REPRESENTATIVE KELLER made a motion to adopt an amendment to delete HB 269's proposed new AS 34.08.250(f) [and the references to it].

REPRESENTATIVE HOLMES objected, and requested that she be given time to research the issues raised.

REPRESENTATIVE KELLER withdrew the amendment.

VICE CHAIR THOMPSON announced that HB 269 would be held over.

[2:54:28 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:54 p.m.