

**HB**

**269**

<TARGET><BILL>HB 269</BILL><SUBJECT>HB  
269</SUBJECT><COMM>HJUD27</COMM></TARGET>



## **Representative Lindsey Holmes**

### **House Bill 269 Sponsor Statement**

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

In 1986 Alaska adopted the Common Interest Ownership Act found in AS 34.08. This law was based on the 1982 version of the Uniform Common Interest Ownership Act ("UCIOA") that served as a model for condominium statutes around the country. Since then, the national UCIOA has been revised more than once, with the most recent version in 2008. However, Alaska's law has not been similarly updated. HB 269 takes one section of the updated UCIOA and incorporates it into Alaska's law.

When a developer begins construction of a common interest community such as a condominium development they have to specify a timeline for the continued development of the project. Under current law, if a developer and the homeowners association of a common interest community want to extend the timeline for these development rights it takes a unanimous vote of the homeowners.

Achieving a unanimous vote, even for a project with overwhelming support is problematic at best. In the 1994 version of the UCIOA this problem was addressed by modifying the threshold to a super-majority of 80% of the homeowners. HB 269 would mirror this change. An 80% threshold for modifying the timeline for development rights will still require extremely strong support, but will not require a prohibitively difficult unanimous vote.

This update to Alaska's law is especially important now due to the recent difficulties in the economy. With the new economics of the housing market, development rights are often the only valuable remaining part of many projects, but without this change communities and developers may be unable to extend the timelines for those development rights, which would decrease the value of these projects and discourage participation by banks as lenders. HB 269 will ensure that those communities and developers will have the necessary tools in statute to address this issue and keep Alaska's economy moving forward.

Please join me in supporting HB 269 to protect and strengthen Alaska's housing industry.

# FISCAL NOTE

**STATE OF ALASKA**  
**2012 LEGISLATIVE SESSION**

Bill Version HB 269  
 Fiscal Note Number \_\_\_\_\_  
 () Publish Date \_\_\_\_\_

Identifier (file name) HB269-DCCED-DCRA-03-14-12 Dept. Affected DCCED  
 Title Common Interest Communities Appropriation Community & Regional Affairs  
 Allocation Community & Regional Affairs  
 Sponsor Representative Holmes  
 Requester House Labor & Commerce OMB Component Number 2879

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</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>FUND SOURCE</b>		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
<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>POSITIONS</b>							
Full-time							
Part-time							
Temporary							

<b>CHANGE IN REVENUES</b>							

Estimated **SUPPLEMENTAL (FY12) operating costs** \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Initial version

Prepared by Scott Ruby, Director  
 Division Community and Regional Affairs  
 Approved by Susan K. Bell, Commissioner  
Commerce, Community, and Economic Development

Phone 269-4569  
 Date/Time 3/14/12 9:00 AM  
 Date 3/14/2012

**FISCAL NOTE**

**STATE OF ALASKA  
2012 LEGISLATIVE SESSION**

**BILL NO. HB 269**

**Analysis**

HB 269 modifies the Common Interest Ownership Act to allow for 80% of the homeowners to vote on development rights versus the current law that requires a unanimous vote. This conforms to the recently updated Federal Uniform Common Interest Ownership Act.

There is no anticipated fiscal impact to the Division as a result of this legislation.



# Alaska State Home Building Association

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April 2, 2012

The Honorable Lindsey Holmes  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99811

SUBJECT: Support for HB269, common interest community

Dear Representative Holmes:

This letter is to provide a statement of support for House Bill 269, an Act relating to the amendment of a declaration that creates a common interest community.

Following our annual legislative visits in Juneau, the Alaska State Home Building Association (ASHBA) Legislative Committee discussed HB269. The consensus of the Committee was to support the bill, and to provide this letter.

To summarize, we have all reviewed the bill and the sponsor statement. A unanimous vote of a homeowners association is a level of achievement that can amount to an unreasonable impediment for developing a project. HB269 strikes a balance by setting an 80% threshold.

This bill will help both developers and owners in a common interest community to exercise their rights and opportunities, and we hope it will pass the legislature this session.

Sincerely,

Charles Edwardson, Chairman  
ASHBA Legislative Committee

## SECTION 2-117. AMENDMENT OF DECLARATION.

(a) Except in cases of amendments that may be executed by a declarant under Section 2-109(f) or 2-110, the association under Section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or certain unit owners under Section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as limited by subsections (d), (f), (g), and (h), the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least [67] percent of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every [county] in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to Section 2-112(a), must be indexed [in the grantee's index] in the name of the common interest community and the association and [in the grantor's index] in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this [act], no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, or change the allocated interests of a unit, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by this [act] to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by any officer of the

association designated for that purpose or, in the absence of designation, by the president of the association.

(f) An amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units only by vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, unless the declaration specifies that a larger percentage of unit owners must vote or agree to that amendment or that such an amendment may be approved by unit owners of units having at least 80 percent of the votes of a specified group of units that would be affected by the amendment . An amendment approved under this subsection must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(g) The time limits specified in the declaration pursuant to Section 2-105(a)(8) within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

(h) A provision in the declaration creating special declarant rights that have not expired may not be amended without the consent of the declarant.

(i) If any provision of this [act] or of the declaration requires the consent of a holder of a

security interest in a unit as a condition to the effectiveness of an amendment to the declaration, that consent is deemed granted if a refusal to consent in a record is not received by the association within 60 days after the association delivers notice of the proposed amendment to the holder at an address for notice provided by the holder or mails the notice to the holder by certified mail, return receipt requested, at that address. If the holder has not provided to the association an address for notice, the association shall provide notice to the address in the security interest of record. Notwithstanding this section, an amendment to the declaration that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(j) If the declaration contains a provision requiring that amendments to the declaration may be adopted only by the vote or agreement of unit owners of units to which more than 80 percent of the votes in the association are allocated, the amendment is approved:

(1) if:

- (A) unit owners of units to which at least 80 percent of the votes in the association are allocated vote for or agree to the proposed amendment;
- (B) no unit owner votes against the proposed amendment; and
- (C) notice of the proposed amendment is delivered to the unit owners holding the votes in the association which have not voted or agreed to the proposed amendment and no written objection to the proposed amendment is received by the association within 60 days after the association delivers notice; or

(2) unit owners of units to which at least 80 per cent of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in [insert appropriate court] against all objecting unit owners, the court finds that the objecting unit owners do not have an interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect.



*First American Title*

**TERRY E. BRYAN**  
VICE PRESIDENT  
ALASKA STATE MANAGER

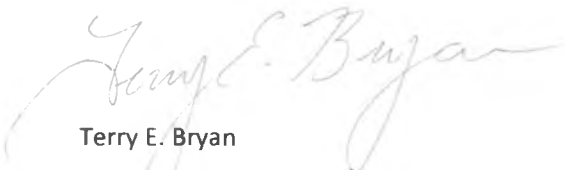
February 20, 2012

Honorable Representative Kurt Olson  
Chairman, House Labor & Commerce Committee  
120 4<sup>th</sup> Street, Room 24  
State Capital  
Juneau, AK 99801

First American Title Insurance Company has operated as a Title Insurance Company and as a Title Insurance Limited Producer within the State of Alaska for more than 35 years. Currently we conduct business with 11 direct operations while simultaneously supporting a network of Agents that employ Alaskan throughout the state. We provide Title Insurance product and services as well as escrow services to Alaskans in every city, village and borough within our great state.

First American Title fully supports HB 269 "An Act relating to the amendment of a declaration that creates a common interest community".

Respectfully Submitted,



Terry E. Bryan  
Vice President and Alaska State Manager



27-LS1125VM  
Bullock  
4/5/12

m Rep Keller  
obj. JH

**CS FOR HOUSE BILL NO. 269(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE HOLMES**

**A BILL**

**FOR AN ACT ENTITLED**

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

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 34.08.250(a) is amended to read:

5 (a) Except for amendments that may be executed by a declarant under  
6 AS 34.08.170(b) or 34.08.180, [OR] by the association under AS 34.08.140(d),  
7 34.08.160(c), 34.08.200(a), 34.08.210, or 34.08.740, or by certain unit owners under  
8 AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.260(b), and except as limited  
9 by (d) or required by (f) of this section, a declaration, including any required plats  
10 and plans, may be amended only by vote or agreement of unit owners of units  
11 comprising either at least 67 percent of the allocated interests in the association or a  
12 larger percentage specified in the declaration. A declaration may not specify a smaller  
13 number unless all of the units are restricted exclusively to nonresidential use.

14 **\* Sec. 2.** AS 34.08.250(d) is amended to read:

1 (d) Except to the extent expressly permitted or required in [BY OTHER  
2 PROVISIONS OF] this chapter, an amendment may not create or increase special  
3 declarant rights, increase the number of units, or change the boundaries of a unit, the  
4 allocated interests of a unit, or the uses to which a unit is restricted, in the absence of  
5 unanimous consent of the unit owners.

6 \* **Sec. 3.** AS 34.08.250 is amended by adding a new subsection to read:

7 (f) The time limits specified in a declaration described under  
8 AS 34.08.130(a)(8) may be extended and additional development rights created if  
9 persons entitled to cast at least 80 percent of the votes in the association, including 80  
10 percent of the votes allocated to units not owned by the declarant, agree to the  
11 extension or additional development rights. The agreement is effective 30 days after  
12 an amendment to the declaration reflecting the terms of the agreement is recorded  
13 unless all persons holding special declarant rights affected by the amendment or  
14 security interests in those rights

- 15 (1) record a written objection within the 30-day period, in which case,  
16 the amendment is void; or  
17 (2) consent in writing when the amendment is recorded, in which case,  
18 the amendment is effective when recorded.



## Representative Lindsey Holmes

### House Bill 269 Sponsor Statement

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Achieving a unanimous vote, even for a project with overwhelming support is problematic at best. In the 1994 version of the UCIOA this problem was addressed by modifying the threshold to a super-majority of 80% of the homeowners. HB 269 would mirror this change. Añ 80% threshold for modifying the timeline for development rights will still require extremely strong support, but will not require a prohibitively difficult unanimous vote.

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Please join me in supporting HB 269 to protect and strengthen Alaska's housing industry.

Legal -  
"not automatic  
Condo assoc. has to  
vote to  $\Delta$  its rules  
& by laws"

$\Delta$  threshold  
vote. %

Q. Rep. Keller -  
Constitutional  
issues?  
Dept. of Law

**HOUSE BILL NO. 269**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE HOLMES**

**Introduced: 1/17/12**

**Referred: Labor and Commerce, Judiciary**

**A BILL**

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8 AS 34.08.160(b), 34.08.200(a), 34.08.210(b), or 34.08.260(b), and except as limited  
9 by (d) **or required by (f) and (g)** of this section, a declaration, including any required  
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11 that may occupy units. The amendment must provide reasonable protection for a use  
12 or occupancy permitted at the time the amendment was adopted.

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17 extension or additional development rights. The agreement is effective 30 days after  
18 an amendment to the declaration reflecting the terms of the agreement is recorded  
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22 the amendment is void; or

23 (2) consent in writing when the amendment is recorded, in which case,  
24 the amendment is effective when recorded.

w/d

Keller  
Amad.

# FISCAL NOTE

**STATE OF ALASKA**  
**2012 LEGISLATIVE SESSION**

Bill Version HB 269  
 Fiscal Note Number \_\_\_\_\_  
 ( ) Publish Date \_\_\_\_\_

Identifier (file name) HB269-DCCED-DCRA-03-14-12 Dept. Affected DCCED  
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 Sponsor Representative Holmes  
 Requester House Labor & Commerce OMB Component Number 2879

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Personal Services							
Travel							
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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>FUND SOURCE</b>		(Thousands of Dollars)					
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1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
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<b>POSITIONS</b>							
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Part-time							
Temporary							

<b>CHANGE IN REVENUES</b>							
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Estimated **SUPPLEMENTAL (FY12) operating costs** \_\_\_\_\_ (separate supplemental appropriation required;  
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** \_\_\_\_\_ (separate capital appropriation required)  
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Initial version

Prepared by Scott Ruby, Director  
 Division Community and Regional Affairs  
 Approved by Susan K. Bell, Commissioner  
Commerce, Community, and Economic Development

Phone 269-4569  
 Date/Time 3/14/12 9:00 AM  
 Date 3/14/2012

**FISCAL NOTE**

**STATE OF ALASKA  
2012 LEGISLATIVE SESSION**

**BILL NO.** HB 269

**Analysis**

HB 269 modifies the Common Interest Ownership Act to allow for 80% of the homeowners to vote on development rights versus the current law that requires a unanimous vote. This conforms to the recently updated Federal Uniform Common Interest Ownership Act.

There is no anticipated fiscal impact to the Division as a result of this legislation.

## Melanie Lesh

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**From:** yuri morgan <yuri@gci.net>  
**Sent:** Monday, April 02, 2012 3:08 PM  
**To:** Melanie Lesh  
**Subject:** Testimony on HB269 - common interest communities

Hi Melanie:

Joe Beedle, President & CEO of Northrim Bank, would like to call in to testify in support of HB269 - Common Interest Communities - in House Judiciary this Wednesday, April 4th beginning at 1:00PM.

Thank you for providing me with the off-net number, which I will forward on to Mr. Beedle.

Thanks, and please let me know if you have any questions.

yuri  
388.8611