

MUNICIPALITY OF ANCHORAGE

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Mayor Ethan Berkowitz

March 31, 2017

Senator Dennis Egan
ALASKA STATE LEGISLATURE
State Capitol Room 417
Juneau, AK 99801

Re: Letter of Support for SB 100, An Act Relating to Municipal Liens

Senator Egan:

I write in support of SB 100, an Act relating to municipal liens. The Act would remove a cloud on the traditional ability of municipalities to protect their law-abiding citizens and taxpayers by recording liens.

The Act simply helps municipalities collect their bills. It costs the State nothing.

The need for the Act stems from a legislative effort to address an entirely unrelated problem: in 1998, the Legislature passed SB 195 to prevent individuals from filing bogus liens against public-office holders. 43 such liens had been filed on property owned by municipal officials in Anchorage (including the mayor and every member of the Assembly). *See Testimony on SB 195* (Jan. 27, 1998) (statements of Benintendi and Wooliver).

The Legislature addressed the problem by prohibiting (and actually *criminalizing*) the filing of "nonconsensual common law liens." It defined "nonconsensual common law liens" as those that are not (a) consensual, (b) imposed by a court, or (c) "provided for by a specific state or federal statute."

Unfortunately, the language adopted by the Legislature has been used to call into doubt the validity of several *municipal* liens (which are authorized by local ordinance, and not directly by state or federal statute). Some local liens have been completely invalidated.

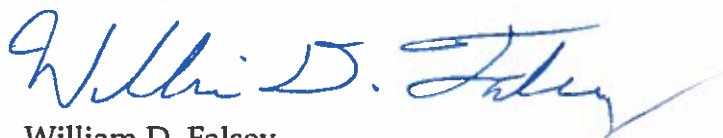
In 2012, the Alaska Supreme Court held that the 1998 law prevents a non-home rule municipality from recording a lien to secure payment of unpaid bills for municipal garbage-collection services. The Court felt itself bound by the language of the 1998 Act to conclude that a municipality's lien was an illegal "nonconsensual common law lien." *See Cutler v. Kodiak Island Borough*, 290 P.3d 415, 416-17 (Alaska 2012) ("We conclude that the Borough lacks authority to record nonconsensual property liens to secure payment for garbage-related charges.")

That was plainly not the Legislature's intended effect, and it makes no sense.

Municipalities must be able to record liens for valid public purposes—to ensure payment of unpaid bills, to recover the costs of abating public nuisances, etc. Municipalities simply do not file liens of the sort targeted by the 1998 Act: “bogus” liens with “no legal merit whatsoever,” used mainly “as a harassment tactic.” *See Testimony on SB 195* (Jan. 27, 1998) (statements of Benintendi, Groh, and Wooliver). SB 100 would continue to prohibit liens of that sort, while helping to ensure that municipalities can simply remain solvent.

The Anchorage Assembly resolved that passage of a bill like SB 100 is one of its top legislative priorities. *See AR 2016-324; AIM 173-2016*. The Municipality urges support of SB 100.

Very Truly Yours,



William D. Falsey
Municipal Attorney

Cc Ethan Berkowitz, Mayor