

SB

100

<TARGET><BILL>SB 100</BILL><SUBJECT>SB
100</SUBJECT><COMM>HJUD30</COMM></TARGET>



SENATOR DENNIS EGAN

MEMORANDUM

April 11, 2017

To: Representative Matt Claman, Chair
House Judiciary Committee

From: Sen. Dennis Egan

A handwritten signature in blue ink, appearing to be "D. Egan", written over a horizontal line.

Re: SB 100, Municipal Liens

I respectfully request a hearing on Senate Bill 100, which would restore municipalities' power to provide for liens to collect money owed for municipal services or hazard abatement.

I look forward to discussing the bill with you and the committee.

If you have questions about scheduling this bill, please feel free to contact Jesse Kiehl in my office at 465-6827.

ALASKA SENATE

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108

SENATOR.DENNIS.EGAN@LEGIS.STATE.AK.US



SENATOR DENNIS EGAN

SB 100 - Municipal Liens

Sponsor Statement

SB 100 is at the request of a number of Alaska city attorneys. It fixes an unintended consequence of a 1998 bill aimed at ending unauthorized 'common law' liens that were being used to go after public servants when individuals disagreed with a government action.

Liens are a tool local governments across America use to recoup unpaid costs of providing services or abating dangerous situations. In Alaska, many rural municipalities provide utility services for their communities. Those municipalities use liens to collect from people who use services but don't pay. Liens have historically also been used to recover local governments' costs when they have to abate dangerous, dilapidated, or public nuisance properties.

In 2012, the Alaska Supreme Court held that because liens based solely on municipal law were not included in the code of civil procedure, municipal liens without a hook to some other state law were not valid. SB 100 puts the tools back in municipalities' hands by giving liens under municipal law the same authority as state and federal law liens under Alaska statutes.

ALASKA SENATE

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SENATOR.DENNIS.EGAN@AKLEG.GOV



SENATOR DENNIS EGAN

MEMORANDUM

March 30, 2017

To: Senator John Coghill, Chair
Senate Judiciary Committee

From: Sen. Dennis Egan

Re: Sectional Analysis, SB 100

Sec. 1 amends the Code of Civil Procedure to exclude liens authorized by municipal code from the definition of “nonconsensual common law lien.”

Sec. 2 amends the crime of “offering a false instrument for recording in the second degree.” Currently, it is a crime to present a lien to the recorder’s office for recording, filing or registering if the lien was not one authorized by state or federal statute, or if it had not been imposed or authorized by a court of law. This bill section would allow a person to legally record, file or register a municipal lien.

Sec. 3 amends the law listing the general powers of municipalities by adding a new paragraph to let municipalities adopt ordinances authorizing liens securing payment for utility bills, abatement costs, and other fees and charges. This section also, establishes the priority these liens have for payment, in relation to other liens authorized by law.

Sec. 4 amends state law on liens to do the same as in Section 1: the definition of nonconsensual lien will exclude liens provided for by municipal ordinance.

MUNICIPALITY OF ANCHORAGE



Office of the Municipal Attorney
Civil Division, Suite 730

Telephone: 907-343-4545
Fax: 907-343-4550

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,

A handwritten signature in blue ink that reads "William D. Falsey". The signature is written in a cursive, flowing style.

William D. Falsey
Municipal Attorney

Cc Ethan Berkowitz, Mayor

Presented by: The Manager
Introduced: 04/03/2017
Drafted by: A. G. Mead

RESOLUTION OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2795

A Resolution In Support of Legislation Authorizing the Creation and Enforcement of Municipal Liens.

WHEREAS, in 1998, in an effort to discredit unauthorized common law liens recorded against public servants when those individuals disagreed with government action, the legislature passed legislation unintentionally rendering municipal liens unenforceable while preserving the enforceability of state law liens; and

WHEREAS, the ability to provide for the creation, recording, and enforcement of liens has historically been an effective tool used by municipalities to recover unpaid costs incurred by the municipality in providing services such as public nuisance abatement and public utilities; and

WHEREAS, in 2012, the Alaska Supreme Court, in *Cutler v. Kodiak Island Borough*, 290 P.3d 415 (Alaska 2012), held that as liens solely based on municipal law were not recognized as an exception to the definition of nonconsensual liens embodied in AS 09.45.169(2), liens provided for solely by municipal code were unenforceable; and

WHEREAS, SB 100 would return to municipalities the ability to use liens to secure payment for services rendered and costs incurred in addressing public nuisances and in providing utility services by giving liens arising solely under municipal law the same authority state and federal law liens hold under AS 09.45.169(2).

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:


Section 1. The Assembly of the City and Borough of Juneau fully supports the passage of SB 100, or other legislation that accomplishes the same purpose.

Section 2. Effective Date. This resolution shall be effective immediately after its adoption.

Adopted this 3rd day of April, 2017.


Kendell D. Koelsch, Mayor

Attest:


Laurie J. Sica, Municipal Clerk



Fairbanks North Star Borough

PO Box 71267 | 907 Terminal Street | Fairbanks, Alaska 99707-1267 | (907) 459-1300 | www.fnsb.us

April 5, 2017

Senator John Coghill
Chair, Senate Judiciary Committee
State Capitol, Room 119
Juneau, AK 99801

RE: Support for SB 100 -- MUNICIPAL LIENS: AUTHORITY FOR & PRIORITY

Dear Senator Coghill,

The Fairbanks North Star Borough supports SB 100, An Act Relating to Municipal Liens. SB 100 corrects an apparent unintended result of previous legislative efforts to prevent individuals from filing unauthorized liens against public servants, and will help with activities such as collection of unpaid costs and abatement actions in code enforcement.

State law currently prohibits the filing of a nonconsensual common law lien. *See* AS 09.45.169(2) (defining nonconsensual common law lien as not provided for by state or federal statute, not dependent on property owner's consent for its existence, and not imposed by a court recognized under state or federal law); AS 09.45.167(a) (providing that a person who records a nonconsensual common law lien is liable to the property owner for damages, costs, and attorney's fees). A 2012 Alaska Supreme Court case¹ interpreted this as preventing a municipality from recording a lien to secure payment for situations such as unpaid bills for municipal garbage collection services.

It is desirable that municipalities have the ability to enact ordinances allowing them to use liens for valid public purpose such as ensuring payment of municipal-provided services so that this burden is not passed on to other taxpayers. This bill accomplishes local government goals at no cost to the state. I fully support the passage of SB 100 and urge your support.

Sincerely,

Karl Kassel, Mayor
Fairbanks North Star Borough

Cc: Senate Judiciary Committee

¹ *Se Cutler v. Kodiak Island Borough*, 290 P.3d 415 (Alaska 2012)(holding that liens solely based on municipal codes were nonconsensual common law liens and not authorized under state law).



Municipality of Anchorage

Office of the Mayor

Ethan Berkowitz, Mayor

March 31, 2017

The Honorable Dennis Egan
State Capitol, Room 417
Juneau, Alaska 99801

Dear Senator Egan,

Today, we write in support of SB 100. In December of last year, the Anchorage Assembly approved the Municipality of Anchorage's 2017 Legislative Program. Included was a priority recommendation to address an outstanding issue with "nonconsensual common law liens" created in 1998, with the passage of SB 195.

Passage of SB 100 would aid local governments' collection of past due bills.

We've worked with other Alaska communities that also support this legislation and appreciate your efforts toward passage of SB 100.

Sincerely,

Ethan Berkowitz
Mayor

Elvi Gray-Jackson
Anchorage Assembly Chair



"Village with a Past, City with a Future"

210 Fidalgo Avenue, Kenai, Alaska 99611-7794
Telephone: (907) 283-7535 / FAX: (907) 283-3014
www.ci.kenai.ak.us

April 4, 2017

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

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

Dear Senator Egan:

Thank you for introducing SB 100, an Act Relating to Municipal Liens. The City of Kenai supports this Bill which returns to municipalities the clear ability to create and enforce certain municipal liens. The City provides water and sewer utilities and enforces laws related to public health, safety and welfare; which occasionally require the City to take action on private property to protect the public from unsafe or dangerous conditions. Enabling the City to create and enforce liens authorized by municipal ordinances for these rendered services improves efficiency and lowers City costs by providing a tool for the City to securely recoup its expenditures. Unpaid utility charges are often individually small enough that securing a court order is not cost effective, but collectively these charges can be substantial.

Creating and enforcing liens was a tool previously utilized by municipalities. In a 2012 Alaska Supreme Court Case, *Cutler v. Kodiak Island Borough*, 290 P.3d 415, the Court determined that SB 195, which became law in 1998, prohibited the Kodiak Island Borough (a second class borough) from creating and enforcing liens for garbage collection service charges. After the decision as a cautionary matter, the City of Kenai, a home rule city, stopped creating and recording its own liens. Senate Bill 195 was intended to protect public officials and servants from frivolous lien filings by individuals, and in doing so, limited liens to those consensually agreed to, imposed by a court or provided for by state or federal statute. Senate Bill 195's legislative history, does not indicate any intention to remove a municipality's ability to impose its own valid liens.

Senate Bill 100 imposes no costs to the State, has public benefit, and improves local government efficiency and the financial bottom line. Please let me know if the City can provide any further support to help SB 100 become law.

Sincerely,

Paul Ostrander
City Manager

cc: City of Kenai Council Members

Presented by:
City Attorney

Action taken:
Yes 5
No 0
Abstain 0

CITY OF NOME, ALASKA

RESOLUTION NO. R-17-04-02

A RESOLUTION SUPPORTING PASSAGE OF SB 100 AUTHORIZING MUNICIPAL LIENS

WHEREAS, in 1998, in an effort to discredit unauthorized common law liens recorded against public servants when those individuals disagreed with government action, the legislature passed legislation unintentionally rendering municipal liens unenforceable while preserving the enforceability of state law liens; and

WHEREAS, the ability to provide for the creation, recording, and enforcement of liens has historically been an effective tool used by municipalities to recover unpaid costs incurred by the municipality in providing services such as public nuisance abatement and public utilities; and

WHEREAS, in 2012, the Alaska Supreme Court, in *Cutler v. Kodiak Island Borough*, 290 P.3d 415 (Alaska 2012), held that as liens solely based on municipal law were not recognized as an exception to the definition of nonconsensual liens embodied in AS 09.45.169(2), liens provided for solely by municipal code were unenforceable; and

WHEREAS, SB 100 would return to municipalities the ability to use liens to secure payment for services rendered and costs incurred in addressing public nuisances and in providing utility services by giving liens arising solely under municipal law the same authority state and federal law liens hold under AS 09.45.169(2).

NOW, THEREFORE, BE IT RESOLVED by the Nome Common Council that:

1. The City of Nome fully supports the passage of SB 100 or similar legislation which authorizes a local government to provide for the creating and recording of municipal liens by ordinance.

APPROVED and SIGNED this 10th day of April, 2017.

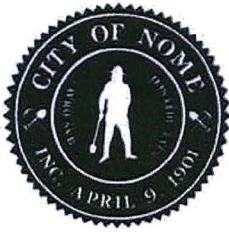


RICHARD BENEVILLE, Mayor

ATTEST:



THOMAS MORAN, Manager



CITY OF NOME
City Manager's Office
P.O. Box 281
Nome, Alaska 99762
907.443.6600
tmoran@nomealaska.org

AGENDA STATEMENT

Meeting Date: April 10, 2017
From: Brooks Chandler, City Attorney
Subject: Resolution Supporting Passage of SB 100

Background & Justification:

SB 100 would provide authority for the City of Nome to adopt an ordinance allowing the city to file liens against real property owned by persons delinquent in payment of utility bills. Liens could also be filed in order to recover the costs of abatement of run down or abandoned buildings.

The change in state law is necessary because of a 2012 Alaska Supreme Court decision. The court in a case originating in Kodiak ruled that cities and boroughs do not have this authority without a specific state law.

At the 2016 annual meeting of municipal attorneys I volunteered to be part of a group that would seek to change state law. We did not expect to have a bill introduced until 2018 but the Anchorage lobbyist was able to find a sponsor who has introduced SB 100.

Part of the plan to have the bill adopted is to show it is not just a bunch of lawyers sitting around thinking about how to make the world a better place. No one cares about that but they would care about elected local officials saying they want the law changed. This resolution is one way to do that. Other communities are considering similar resolutions or writing letters of support.

SB 100 is a grant of authority. Whether Nome believes we should add liens as an alternative to small claims cases to collect utility charges or abatement costs is something the council would decide later. It would take an ordinance amending city code to allow the City or NJUS to file liens.

We believe liens are an efficient collection tool. It is much less expensive to file a lien than to go to court and obtain a judgment. A lien may be recorded and then the City or NJUS just waits for the property to be sold at which time the new owner will demand the seller use the proceeds to pay off the lien.

Recommendation:

That the Nome Common Council adopts the resolution supporting passage of SB 100.

Introduced By:
Date:
Action:
Vote:

City Manager
April 12, 2017
Adopted
6 Yes, 0 No

CITY OF SOLDOTNA
RESOLUTION 2017-009

A RESOLUTION SUPPORTING SENATE BILL 100 (SB 100) AUTHORIZING THE
CREATION AND ENFORCEMENT OF MUNICIPAL LIENS

WHEREAS, in 1998, in an effort to discredit unauthorized common law liens recorded against public servants when those individuals disagreed with government action, the legislature passed legislation unintentionally rendering municipal liens unenforceable while preserving the enforceability of state law liens; and

WHEREAS, the ability to provide for the creation, recording, and enforcement of liens has historically been an effective tool used by municipalities to recover unpaid costs incurred by the municipality in providing services such as public nuisance abatement and public utilities; and

WHEREAS, in 2012, in *Cutler v. Kodiak Island Borough*, 290 P. 3d 415 (Alaska 2012) the Alaska Supreme Court held that as liens solely based on municipal law were not recognized as an exception to the definition of nonconsensual liens embodied in AS 09.45.169(2), and that liens provided for solely by municipal code were unenforceable; and

WHEREAS, SB 100 would return to municipalities the ability to use liens to secure payment for services rendered and costs incurred in addressing dangerous buildings, other public nuisances and in providing utility services by giving liens arising solely under municipal law the same authority state and federal law liens hold under AS 09.45.169(2);

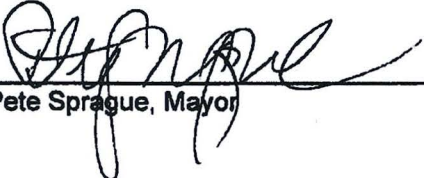
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA, ALASKA:

Section 1. The Soldotna City Council supports SB 100 and any amendments thereto that accomplish the same purposes and intent.

Section 2. That a copy of this Resolution be forwarded to our representatives in the Alaska State Legislature and to Governor Bill Walker.

Section 3. This resolution shall become effective immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL THIS 12TH DAY OF APRIL, 2017.



Pete Sprague, Mayor

ATTEST:


Michelle M. Sarfer, MMC, City Clerk

Yes: Whitney, Daniels, Cox, Cashman, Murphy, Parker
No: None

**CITY OF UNALASKA
UNALASKA, ALASKA**

RESOLUTION 2017-30

**A RESOLUTION OF THE UNALASKA CITY COUNCIL SUPPORTING PASSAGE OF SB 100
AUTHORIZING MUNICIPAL LIENS**

WHEREAS, in 1998, in an effort to discredit unauthorized common law liens recorded against public servants when those individuals disagreed with government action, the legislature passed legislation unintentionally rendering municipal liens unenforceable while preserving the enforceability of state law liens; and


WHEREAS, the ability to provide for the creation, recording, and enforcement of liens has historically been an effective tool used by municipalities to recover unpaid costs incurred by the municipality in providing services such as public nuisance abatement and public utilities; and

WHEREAS, in 2012, the Alaska Supreme Court, in *Cutler v. Kodiak Island Borough*, 290 P.3d 415 (Alaska 2012), held that as liens solely based on municipal law were not recognized as an exception to the definition of nonconsensual liens embodied in AS 09.45.169(2), liens provided for solely by municipal code were unenforceable; and


WHEREAS, SB 100 would return to municipalities the ability to use liens to secure payment for services rendered and costs incurred in addressing public nuisances and in providing utility services by giving liens arising solely under municipal law the same authority state and federal law liens hold under AS 09.45.169(2).

NOW, THEREFORE, BE IT RESOLVED by the Unalaska City Council that the City Council fully supports the passage of SB 100 or similar legislation which authorizes a local government to provide for the creating and recording of municipal liens by ordinance.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 11th DAY OF APRIL, 2017.



FRANK KELTY
MAYOR

ATTEST:


CAT HAZEN
CITY CLERK



Introduced by: Council Member Albertson
Introduction Date: April 11, 2017
Action: Passed
Vote: 4-0

CITY OF BETHEL, ALASKA

Resolution #17-08

**A RESOLUTION IN SUPPORT OF LEGISLATION CORRECTING PROBLEM
CAUSED BY COURT RULING AND RETURNING AUTHORITY OF
MUNICIPALITIES TO FILE AND ENFORCE LIENS FOR NON-PAYMENT OF
SERVICES**

WHEREAS the City of Bethel provides water and sewer services to residents and businesses located within the City;

WHEREAS the City also provides ambulance, police, safety, port, parks and recreation, planning and other services to all who reside or visit Bethel;

WHEREAS in 2012 the Alaska Supreme Court found that because liens based on municipal law were not included in AS 09.45.169(2), that municipal liens for services were no longer valid;

WHEREAS prior to the 2012 decision, municipalities had utilized liens for decades as a last resort method to help collect and recover costs of providing services when all other methods to collect from the responsible party had failed;

WHEREAS the legislature, specifically, Senator Egan, is sponsoring SB-100 that would give liens issued under municipal law the same authority as liens under state law;

WHEREAS the bill would give the City of Bethel back its lien powers and would go a long way towards collection efforts;

NOW, BE IT RESOLVED, that the Bethel City Council supports legislation giving liens under municipal law the same authority as liens under state law.

ENACTED THIS 11th DAY OF APRIL 2017, BY A VOTE OF 4 IN FAVOR AND 0 OPPOSED.

ATTEST:


Richard Robb, Mayor


Lori Strickler, City Clerk

From: Tim Benintendi
To: [Jesse Kiehl](#)
Subject: SB 195, Common Law Liens....
Date: Saturday, April 01, 2017 2:53:36 PM

Hi, Jesse: It was good to speak with you yesterday.

In response to your question about SB 195 (Ch. 20, SLA 98) my recollection is that the bill did not address municipal services or nuisance properties, and that any committee discussions on the bill did not raise those issues.

Please let me know if I can be of further assistance. Greetings to Senator Egan.

~~ tim benintendi, former legislative asst.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: SB 100
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB100-DCCED-DCRA-03-31-17
Title: MUNICIPAL LIENS: AUTHORITY FOR & PRIORITY
Sponsor: EGAN BY REQUEST
Requester: (S) Judiciary

Department: Department of Commerce, Community and Economic Development
Appropriation: Community and Regional Affairs
Allocation: Community and Regional Affairs
OMB Component Number: 2879

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimated SUPPLEMENTAL (FY2017) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2018) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? n/a

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Katherine Eldemar, Director	Phone: (907)465-8249
Division: Community and Regional Affairs	Date: 03/31/2017 11:13 AM
Approved By: Catherine Reardon, Director	Date: 03/31/16
Agency: Division of Administrative Services, DCCED	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. SB 100

Analysis

SB100 clarifies the current definition of "nonconsensual common law lien" to include liens provided for by municipal ordinance(s). The current definition only expressly includes "state or federal statute" and contains no reference to municipal ordinances.

SB100 also amends AS 29.35.010 by adding sub-section (17), which provides local governments the specific power to file liens on real or personal property for debts other than taxes as noted in sub-section (6) of the statute. Sub-section (17) also provides for the prioritization of liens that are filed or created under this revision to the statute.

The Division of Community and Regional Affairs does not anticipate a fiscal impact from this legislation.