

**SB**

**100**

<TARGET><BILL>SB 100</BILL><SUBJECT>SB  
100</SUBJECT><COMM>SJUD30</COMM></TARGET>



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.

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ALASKA SENATE

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

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**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.

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# 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,



William D. Falsey  
Municipal Attorney

Cc Ethan Berkowitz, Mayor

Presented by: The Manager  
Introduced:  
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 \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Kendell D. Koelsch, Mayor

Attest:

\_\_\_\_\_  
Laurie J. Sica, Municipal Clerk

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

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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.



# Fairbanks North Star Borough

PO Box 71267 | 907 Terminal Street | Fairbanks, Alaska 99707-1267 | (907) 459-1300 | [www.fnsb.us](http://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 case<sup>1</sup> 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 desirous 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

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<sup>1</sup> *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"*

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[www.ci.kenai.ak.us](http://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