

ALASKA LEGISLATURE COMMITTEE FILES

2007-2008

SCRA

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1 is a "participating candidate" under this chapter and is eligible to receive general
2 election funding under AS 15.70.090(a)(2).

3 (b) If a political party nominates candidates for governor and lieutenant
4 governor and only one of the candidates was a certified candidate under this chapter
5 during the primary election campaign period, the candidates may form a joined
6 campaign that is eligible to receive general election funding under AS 15.70.090(a)(2)
7 if the nonparticipating candidate complies with the requirements of (c) or (d) of this
8 section.

9 (c) If a nonparticipating candidate declines to form a joined campaign with a
10 participating candidate subject to this chapter, the candidates shall maintain separate
11 campaign accounts and may not coordinate campaign expenditures. The participating
12 candidate is eligible to receive the amount authorized for a joined campaign under
13 AS 15.70.090(a)(2). An expenditure by the nonparticipating candidate during the
14 general election campaign period shall be treated as an expenditure of the participating
15 candidate under AS 15.70.140.

16 (d) If, from the beginning of the election cycle through the end of the primary
17 election campaign period, a nonparticipating candidate who has declined to form a
18 joined campaign with a participating candidate spent less than the amount set out in
19 AS 15.70.080(b)(1) or (2), the nonparticipating candidate may transfer unspent
20 contributions to the joined campaign up to the amount set out in AS 15.70.080(b)(1) or
21 (2) less the amount spent by the participating candidate and amount of general election
22 expenses prepaid by the participating candidate. Any remaining unspent or
23 unobligated private contributions held by the nonparticipating candidate shall be
24 disbursed in accordance with AS 15.13.116.

25 (e) If, from the beginning of the election cycle through the end of the primary
26 election campaign period, the nonparticipating candidate spent more than the amount
27 set out in AS 15.70.080(b)(1) or (2), the joined campaign is eligible to receive the
28 amount set out in AS 15.70.090(a)(2) less the amount the candidates spent on prepaid
29 general election expenses.

30 (f) If a political party nominates candidates for governor and lieutenant
31 governor and neither candidate was a participating candidate during the primary

1 election period, a joined campaign formed by the two nonparticipating candidates is
2 not eligible for funding under this chapter.

3 **Sec. 15.70.200. Write-in candidates.** (a) A candidate who is conducting a
4 write-in campaign is not eligible for funds authorized to be distributed under this
5 chapter and shall be treated as a nonparticipating candidate under this chapter.

6 (b) If a candidate who is conducting a write-in campaign is running against a
7 certified candidate who has an opponent on the general election ballot, the write-in
8 candidate shall comply with the reporting requirements of AS 15.70.110.

9 **Sec. 15.70.210. Withdrawal by participating candidate.** (a) A candidate may
10 withdraw from participation as a participating candidate at any time within 10 days
11 after the end of the qualifying period under AS 15.70.040 by delivering to the
12 commission a notice of the candidate's intent to withdraw. The candidate may not
13 accept any private contributions until three days after the notice of the candidate's
14 intent to withdraw is received by the commission. A candidate who has submitted a
15 notice of the candidate's intent to withdraw may not receive any further funds
16 authorized to be distributed under this chapter.

17 (b) A participating candidate who withdraws before submitting qualifying
18 contributions to the commission shall use the candidate's best efforts to return all
19 qualifying contributions the candidate has collected to the contributors within 30 days
20 after the candidate's withdrawal. If a contributor cannot be located, the qualifying
21 contributions collected by the candidate shall be remitted to the fund. Any qualifying
22 contributions already submitted by a participating candidate who withdraws shall
23 remain in the fund.

24 (c) A certified candidate who has already received funds authorized to be
25 distributed under this chapter before filing a notice of an intent to withdraw shall
26 immediately stop spending the funds on submission of the notice. The candidate shall
27 return all the unspent funds to the commission within five days after submitting the
28 notice of the candidate's intent to withdraw. The candidate shall repay to the
29 commission all the funds received and spent by the candidate within 30 days after
30 submitting the notice of the candidate's intent to withdraw. A candidate who has not
31 repaid all the funds distributed to the candidate under this chapter within 30 days after

1 withdrawing may not spend private contributions for any purpose until the funds have
2 been repaid.

3 (d) The commission shall adopt regulations governing the form of a notice of
4 a candidate's intent to withdraw.

5 **Sec. 15.70.220. Ballot identification.** The director of elections shall inform
6 voters of which candidates on the ballot are participating in the program established
7 under this chapter by placing the following sentence below the name of each
8 participating candidate on the ballot in the primary and general elections: "This
9 candidate is participating in the state's voluntary public financing program."

10 **Sec. 15.70.230. Insufficient funding.** If, during the election year, the
11 commission determines that there is not enough money appropriated to fully fund all
12 participating candidates, the commission shall issue a declaration of insufficient
13 funding and authorize participating candidates to solicit and accept private
14 contributions permitted under AS 15.13. If the commission issues a declaration of
15 insufficient funding, a participating candidate may not accept more in private
16 contributions than is authorized under the candidate's spending limit under this
17 chapter.

18 **Sec. 15.70.240. Civil penalties.** (a) Except as provided in (b) of this section, a
19 person who violates a provision of this chapter or a regulation adopted under this
20 chapter is subject to a civil penalty not to exceed \$5,000.

21 (b) In addition to any other penalty imposed by law, a certified candidate who
22 exceeds the expenditure limits established under this chapter shall pay as a civil
23 penalty to the fund an amount equal to

24 (1) the amount by which the certified candidate exceeded the limit if
25 the limit is exceeded by more than one percent but not more than three percent;

26 (2) three times the amount by which the certified candidate exceeded
27 the limit if the limit is exceeded by more than three percent but not more than five
28 percent; or

29 (3) five times the amount by which the certified candidate exceeded
30 the limit if the limit is exceeded by more than five percent.

31 (c) A certified candidate who violates the expenditure limits established under

1 this chapter by more than 10 percent is disqualified as a candidate and, if elected, shall
2 forfeit the office to which the candidate was elected.

3 (d) In addition to any other penalty imposed by law, if a nonparticipating
4 candidate fails to file a timely and accurate report under AS 15.70.110 and the failure
5 to do so results in the late payment or nonpayment of matching funds, the
6 nonparticipating candidate shall pay as a civil penalty an amount equal to

7 (1) the amount of matching funds not paid or paid late to a single
8 certified candidate running for the same office, if the amount of the matching funds is
9 \$2,000 or less;

10 (2) three times the amount of matching funds not paid or paid late to a
11 single certified candidate running for the same office, if the amount of the matching
12 funds is more than \$2,000 but less than \$5,000;

13 (3) five times the amount of matching funds not paid or paid late to a
14 single certified candidate running for the same office, if the amount of the matching
15 funds is \$5,000 or more but less than \$10,000; or

16 (4) 10 times the amount of matching funds not paid or paid late to a
17 single certified candidate running for the same office, if the amount of the matching
18 funds is \$10,000 or more.

19 (e) In addition to any other penalty imposed by law, a person or group who
20 makes an independent expenditure under AS 15.70.140(a) and does not file a timely
21 and accurate report under AS 15.70.140 resulting in the late payment or nonpayment
22 of matching funds to a certified candidate, the person or group making the
23 independent expenditure shall pay as a civil penalty an amount equal to

24 (1) the amount of matching funds not paid or paid late to a single
25 certified candidate, if the amount of the matching funds is \$2,000 or less;

26 (2) three times the amount of matching funds not paid or paid late to a
27 single certified candidate, if the amount of the matching funds is more than \$2,000 but
28 less than \$5,000;

29 (3) five times the amount of matching funds not paid or paid late to a
30 single certified candidate, if the amount of the matching funds is \$5,000 or more but
31 less than \$10,000; or

1 (4) 10 times the amount of matching funds not paid or paid late to a
2 single certified candidate, if the amount of the matching funds is \$10,000 or more.

3 (f) In addition to a civil penalty, the commission may require a certified
4 candidate found to be in violation of this chapter or a regulation adopted under this
5 chapter to repay to the fund all or part of the funds distributed to the candidate.

6 (g) The legislature may appropriate money received as civil penalties under
7 this section to the fund.

8 **Sec. 15.70.250. Administrative procedure and appeals.** (a) A candidate who
9 has been denied certification under AS 15.70.070, the opponent of a candidate who
10 has been granted certification under AS 15.70.070, or a registered voter residing in the
11 house district, senate district, or area in which the certified candidate is running for
12 office may challenge a certification decision under this chapter.

13 (b) A certification decision may be appealed to the commission within seven
14 days after the certification decision. The appeal must be in writing and must set out the
15 reasons for the appeal.

16 (c) Within five days after an appeal is properly made and notice is given to the
17 appellant and any candidate in the house district, senate district, or area in which the
18 candidate is running for office, the commission shall hold a hearing. The appellant has
19 the burden of demonstrating that the administrator's decision was improper. The
20 commission shall rule on the appeal within three days after the completion of the
21 hearing.

22 (d) A candidate whose certification is revoked on appeal shall return any
23 unspent distributions from the fund.

24 (e) A decision of the administrator to disburse matching funds under
25 AS 15.70.130 may be appealed to the commission by a candidate opposed to the
26 distribution or by a person or group making an independent expenditure under
27 AS 15.70.140. A decision by the administrator to disburse matching funds shall be
28 implemented, notwithstanding the filing of an appeal, unless the commission issues a
29 stay of the administrator's decision.

30 (f) Any other decision of the administrator may be appealed to the
31 commission. The commission shall adopt regulations establishing appeal procedures.

1 (g) A person or group who believes that a violation of this chapter or a
2 regulation adopted under this chapter has occurred or is occurring may file an
3 administrative complaint with the commission within one year after the date of the
4 alleged violation. The commission may consider a complaint on an expedited basis or
5 a regular basis. The complaint shall be considered in accordance with the procedures
6 set out at AS 15.13.380(b) - (h).

7 (h) A decision of the commission under (c) of this section may be appealed to
8 the superior court. The court may consider the appeal on an expedited basis.

9 **Sec. 15.70.260. Adjustment for inflation.** Beginning in January 2011 and
10 every four years thereafter, the commission shall modify the dollar values specified in
11 AS 15.70.050, 15.70.080, and 15.70.090 to account for inflation. The commission
12 shall adopt by regulation a method to determine and publicly report the amount of the
13 adjustment.

14 **Sec. 15.70.270. Regulations.** The commission shall adopt regulations to
15 ensure effective administration of this chapter. The regulations must include
16 procedures for obtaining qualifying contributions, certification of candidates, recounts,
17 withdrawal or replacement of candidates, distribution of funds authorized by this
18 chapter, reporting of prepaid general election expenses, return of unspent fund
19 distributions, processing complaints alleging violations of this chapter, recordkeeping,
20 and compliance with this chapter.

21 **Sec. 15.70.280. Report to the legislature.** By January 30, 2010, and every
22 four years after that date, the commission shall submit a report to the legislature
23 documenting, evaluating, and making recommendations relating to the administration,
24 implementation, and enforcement of this chapter and of the clean elections fund
25 established in AS 15.70.010.

26 **Sec. 15.70.390. Definitions.** In this chapter,

27 (1) "administrator" means the administrator of the clean elections
28 program appointed in accordance with AS 15.13.030(11);

29 (2) "commission" means the Alaska Public Offices Commission;

30 (3) "contribution" has the meaning given in AS 15.13.400;
31

1 (4) "election cycle," as applied to a candidate for state office, is the
2 period beginning on the 31st day following a general election for that office and
3 ending on the 30th day following the next general election for that office;

4 (5) "election year" means the calendar year during which a state
5 general election for a particular office is held;

6 (6) "expenditure" has the meaning given in AS 15.13.400;

7 (7) "fund" means the clean elections fund established in AS 15.70.010;

8 (8) "general election campaign period" means the period beginning the
9 day following the primary election and ending on the day of the general election;

10 (9) "independent expenditure" has the meaning given in AS 15.13.400;

11 (10) "nonparticipating candidate" means a candidate, as that term is
12 defined in AS 15.13.400, who has not been certified under AS 15.70.070;

13 (11) "participating candidate" means

14 (A) a candidate, as that term is defined in AS 15.13.400, who
15 has agreed to participate in the program authorized by this chapter, who has
16 submitted and not withdrawn a declaration of intent, and who has not been
17 denied certification by the commission; and

18 (B) the joined campaign of the candidates for governor and
19 lieutenant governor under AS 15.70.190(b);

20 (12) "prepaid general election expenses" means payments made by a
21 candidate before the end of the primary election campaign period for goods or services
22 that will be delivered or provided during the general election campaign period and
23 includes

24 (A) rental payments;

25 (B) radio, television, newspaper, and other forms of
26 advertising;

27 (C) wages, salaries, and personnel costs;

28 (D) consulting services;

29 (E) other payments defined by the commission by regulation;

30 (13) "primary election campaign period" means the period beginning
31 the day following the qualifying period and ending the day of the primary election;

1 (14) "program" means the program authorized by this chapter;

2 (15) "qualifying contribution" means an allowable contribution under
3 AS 15.70.060 to a participating candidate that is made after the candidate submits a
4 declaration of intent and before the end of the qualifying period;

5 (16) "qualifying period" means the period during which a candidate
6 may collect qualifying contributions for the purpose of becoming a certified candidate;
7 for a candidate for statewide office, the period begins on August 1 of the year
8 preceding a year in which a general election is held and ends on June 1 of the general
9 election year; for a candidate for the legislature, the period begins on October 1 of the
10 year preceding a year in which a general election is held and ends on June 1 of the
11 general election year;

12 (17) "seed money contribution" means a contribution of not more than
13 \$100 from each individual made to a candidate, including a contribution from the
14 candidate or the candidate's relative;

15 (18) "statewide office" means the office of governor or lieutenant
16 governor.

17 **Sec. 15.70.395. Short title.** This chapter may be known as the Clean Elections
18 Act.

19 * **Sec. 3.** AS 15.13.010 is amended by adding a new subsection to read:

20 (e) This chapter does not limit the application of AS 15.70 to contributions,
21 expenditures, and communications made for the purpose of influencing the nomination
22 or election of a candidate for governor, lieutenant governor, or a member of the state
23 legislature.

24 * **Sec. 4.** AS 15.13.030 is amended to read:

25 **Sec. 15.13.030. Duties of the commission.** The commission shall

26 (1) develop and provide all forms for the reports and statements
27 required to be made under this chapter, AS 15.70, AS 24.45, and AS 39.50;

28 (2) prepare and publish a manual setting out uniform methods of
29 bookkeeping and reporting for use by persons required to make reports and statements
30 under this chapter and AS 15.70, and otherwise assist candidates, groups, and
31 individuals in complying with the requirements of this chapter and AS 15.70;

1 (3) receive and hold open for public inspection reports and statements
2 required to be made under this chapter and AS 15.70, and, upon request, furnish
3 copies at cost to interested persons;

4 (4) compile and maintain a current list of all filed reports and
5 statements;

6 (5) prepare a summary of each report filed under AS 15.13.110 and
7 AS 15.70 and make copies of this summary available to interested persons at their
8 actual cost;

9 (6) notify, by registered or certified mail, all persons who are
10 delinquent in filing reports and statements required to be made under this chapter and
11 AS 15.70;

12 (7) examine, investigate, and compare all reports, statements, and
13 actions required by this chapter, AS 15.70, AS 24.45, and AS 39.50;

14 (8) prepare and publish a biennial report concerning the activities of
15 the commission, the effectiveness of this chapter, its enforcement by the attorney
16 general's office, and recommendations and proposals for change; the commission shall
17 notify the legislature that the report is available;

18 (9) adopt regulations necessary to implement and clarify the provisions
19 of AS 15.70, AS 24.45, AS 39.50, and this chapter, subject to the provisions of
20 AS 44.62 (Administrative Procedure Act); [AND]

21 (10) consider a written request for an advisory opinion concerning the
22 application of this chapter, AS 15.70, AS 24.45, AS 24.60.200 - 24.60.260, or
23 AS 39.50; and

24 (11) appoint an administrator to oversee AS 15.70 and to make
25 decisions authorized by that chapter or decisions under that chapter that are
26 delegated to the administrator by the commission.

27 * Sec. 5. AS 15.13.045(b) is amended to read:

28 (b) In conjunction with (a) of this section, the commission may compel the
29 attendance of witnesses and production of papers, books, records, accounts,
30 documents, and testimony, and may have the deposition of witnesses taken in a
31 manner prescribed by court rule or law for the taking of depositions in civil actions

1 when consistent with the powers and duties assigned to the commission by this chapter
2 and AS 15.70.

3 * Sec. 6. AS 15.13.045(c) is amended to read:

4 (c) The commission may examine the papers, books, records, accounts, and
5 documents of any person subject to this chapter and AS 15.70 to ascertain the
6 correctness of a report filed with the commission, or in conjunction with an
7 investigation or inspection conducted under (a) of this section.

8 * Sec. 7. AS 15.56.012(a) is amended to read:

9 (a) Except as provided in AS 15.56.014 and 15.56.016, a person commits the
10 crime of campaign misconduct in the first degree if the person knowingly engages in
11 conduct that violates a provision of AS 15.13 or AS 15.70, or a regulation adopted
12 under authority of AS 15.13 or AS 15.70.

13 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 **APPLICABILITY.** This Act applies

16 (1) after December 31, 2008, for the election cycles, as that term is defined by
17 AS 15.70.390, enacted by sec. 2 of this Act, for the offices of state senator and state
18 representative; and

19 (2) after December 31, 2010, for the election cycle, as that term is defined by
20 AS 15.70.390, enacted by sec. 2 of this Act, for the offices of governor and lieutenant
21 governor.

LEGAL SERVICES

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MEMORANDUM

January 11, 2008

SUBJECT: Sponsor Substitute for SB 182 - sectional summary
(Work Order No. 25-LS0840\O)

TO: Senator Bill Wielechowski
Attn: Michelle Sydeman

FROM: Alpheus Bullard *AB*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds a provision in uncodified law that provides legislative findings for the establishment of a program of public funding for the financing of election campaigns for the offices of governor, lieutenant governor, state senator, or state representative.

Section 2. Adds chapter 70 to AS 15 (Elections), establishing a program of public funding for the financing of election campaigns of candidates for offices of governor, lieutenant governor, state senator, or state representative, entitled "Clean Elections."

Sec. 15.70.010. Establishes a separate fund in the general fund for the financing of election campaigns of candidates who are certified under the chapter and for the payment of the chapter's administrative and enforcement costs incurred by the Alaska Public Offices Commission.

Sec. 15.70.020. Provides limitations on the use, collection, and expenditure of program funds and other campaign contributions by candidates participating in the public financing of election campaigns program.

Sec. 15.70.030. Establishes how a candidate becomes a participating candidate in the public financing of election campaigns program.

Sec. 15.70.040. Establishes when a candidate may qualify for inclusion in the public financing of election campaigns program.

Sec. 15.70.050. Sets terms for the acceptance and use of "seed money" contributions by a candidate before the candidate files for certification under sec. 15.70.070.

Sec. 15.70.060. Provides conditions for the collection and acceptance of the "qualifying contributions" a candidate running for governor, lieutenant governor, state senator, or state representative must receive in order to become a certified candidate under sec. 15.70.070.

Sec. 15.70.070. Provides how a candidate participating in the public financing of election campaigns program may become a certified candidate eligible for receipt of program funds.

Sec. 15.70.080. Provides expenditure limits for participating candidates during the primary and general election campaign periods.

Sec. 15.70.090. Establishes the monetary amounts that certified candidates are eligible to receive as distributions from the program, allows the commission to establish procedures requiring the use of debit cards by the candidates for the funds disbursed, and limits eligibility for the receipt of program funds for certain candidates.

Sec. 15.70.100. Provides for the timing of distribution of program funds and how the amounts distributed are affected by unspent or unobligated seed money contributions or primary election funds held by a certified candidate.

Sec. 15.70.110. Requires certain candidates who are not participating in the program to file spending limit reports with the commission.

Sec. 15.70.120. Allows the administrator appointed by the Alaska Public Offices Commission to make a determination that a nonparticipating candidate has incurred expenses in excess of the limits established for participating candidates under sec. 15.70.080.

Sec. 15.70.130. Provides for the distribution of certain "matching funds" to participating candidates if nonparticipating candidates running for the same office incur expenses in excess of the limits established under sec. 15.70.080 for participating candidates.

Sec. 15.70.140. Provides for the reporting, investigation, and treatment of independent expenditures made by a person or group supporting or opposing a participating candidate that exceed \$500.

Sec. 15.70.150. Establishes that funds under the chapter must be used only for the purposes set out in AS 15.13.112.

Sec. 15.70.160. Governs contributions from political parties to candidates participating in the public financing of election campaigns program.

Sec. 15.70.170. Requires (1) certified candidates who are unsuccessful in the primary election and (2) all candidates after the general election to return to the commission all funds received under the chapter that have not been spent or otherwise obligated.

Sec. 15.70.180. Provides that a candidate who is seeking to be nominated by petition under AS 15.25.140 - 15.25.200 is eligible to take part in the public financing of election campaigns program if the candidate complies with the requirements of secs. 15.70.020 - 15.70.070 and that such a candidate may accept certain campaign contributions.

Sec. 15.70.190. Provides how the public funding of election campaigns program is applied to governor and lieutenant governor joined campaigns.

Sec. 15.70.200. Establishes that write-in candidates are not eligible to participate in the public funding of election campaigns program and must comply with the reporting requirements of sec. 15.70.110.

Sec. 15.70.210. Establishes how a candidate may withdraw from participation in the public financing of election campaigns program.

Sec. 15.70.220. Provides that the director of elections shall inform voters of which candidates on the ballot are participating in the program.

Sec. 15.70.230. Provides that if during an election year the commission determines that there is insufficient funding for the public financing program that the participating candidates will be authorized to solicit and accept private contributions permitted under AS 15.13 up to the limits established under AS 15.70 for certified candidates.

Sec. 15.70.240. Provides penalties for persons violating the provisions of AS 15.70. Penalties include monetary fines, disqualification as a candidate, and office forfeiture.

Sec. 15.70.250. Establishes administrative procedures for appealing decisions made by the commission or administrator under the chapter.

Sec. 15.70.260. Provides that the commission will modify the dollar values specified in AS 15.70, 15.70.080, and 15.70.090 to account for inflation.

Sec. 15.70.270. Directs the commission to adopt regulations to ensure effective administration of AS 15.70.

Sec. 15.70.280. Establishes that by January 30, 2010, and every four years after that date, that the commission will submit a report to the legislature evaluating the program and making recommendations.

Senator Bill Wielechowski
January 11, 2008
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Sec. 15.70.390. Contains the chapter's definitions.

Sec. 15.70.395. Provides the chapter with a short title: "This chapter may be known as the Clean Elections Act."

Section 3. Establishes that the application of AS 15.13 (state election campaigns) does not limit the application of AS 15.70 (Clean Elections Act) added by sec. 2 of the bill.

Section 4. Amends the duties of the Alaska Public Offices Commission to require that the commission appoint an administrator to administer AS 15.70 and adds administration and enforcement of the provisions of AS 15.70 to the duties of the commission.

Sections 5 and 6. Allows the commission to issue subpoenas, hold hearings, and investigate matters consistent with the powers and duties assigned the commission by AS 15.70.

Section 7. Makes the knowing violation of a provision of AS 15.70, or a regulation adopted under that chapter, a crime of campaign misconduct in the first degree.

Section 8. Adds a provision in uncodified law that the Act is effective December 31, 2008 for the election cycles, as that term is defined in sec. 15.70.390, for the offices of state senator and state representative, and after December 31, 2010, for the offices of governor and lieutenant governor.

If you have any questions, or if I can be of further assistance, please advise.

TLAB:ljw
08-007.ljw

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MEMORANDUM

January 21, 2008

SUBJECT: SB 182 and SSSB 182 Differences
(Work Order Nos. 25-LS0840\E and \O)

TO: Senator Bill Wielechowski
Attn: Michelle Sydeman

FROM: Alpheus Bullard *AB*
Legislative Counsel

You have requested a memorandum about the differences between SB 182 and SSSB 182 ("Clean elections"). The following is a summary of changes made between the two bill versions.

Title. The title has been amended to better express the subject and contents of the bill.

Placement in title AS 15, bill organization, and section headings. The "clean elections" program has been moved from chapter 14 to chapter 70, sections are organized differently, and a few heading titles have been amended. These are drafting choices and have no bearing on the bill's substantive provisions.

Clean elections administrator. In SB 182, a commissioner of the Alaska Public Offices Commission ("commission") was responsible for overseeing administration of the new chapter and for making decisions authorized by the chapter. In SSSB 182, the commission appoints an administrator to oversee administration of the chapter.

Language. Throughout SSSB 182 the statutory language has been modified to be clearer and more exact, i.e. "*the qualifying contributions required of candidates . . .*" has been changed to "*the amount of the qualifying contributions required to be tendered by candidates*"

Effective date. In SSSB 182, the applicability provision has been amended so that the bill would not become effective in the midst of election campaigns for the offices of state senator and state representative. The bill's provisions are now effective for campaigns for these offices in "election cycles" (as defined in the AS 15.70.390(4)) after December 31, 2008.

Independent expenditures. The language in sec. 15.70.140 (independent expenditures) has been changed from "[a] person or group that makes an independent expenditure under

Senator Bill Wielechowski

January 21, 2008

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AS 15.13.135 ... *involving* a participating candidate shall report ..." to read "... *supporting or opposing* a participating candidate ..." (emphasis added). The "supporting or opposing" language mirrors that employed in AS 15.13.135 and is probably less constitutionally objectionable.¹

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
08-029.med

¹ For my previous comments on this provision, please refer to my May 12, 2007, memorandum to your office.

ALASKA STATE LEGISLATURE

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Senator Bill_Wielechowski@legis.state.ak.us

SENATOR BILL WIELECHOWSKI

Sponsor Statement: SB 182

The Alaska Clean Elections Act

Many states are grappling with ways to increase public trust and confidence in the political process. One approach that is generating interest across the country is adoption of "Clean Elections." Under this system, candidates have the option of accepting limited public financing if they agree to forego all private fundraising. Primary goals are to:

- enable candidates to spend more time focusing on issues important to voters, rather than raising campaign funds; and
- provide the opportunity for serious candidates from a diversity of backgrounds to run for public office.

Clean Elections is law in seven states: Arizona, Connecticut, Maine, New Jersey, New Mexico, North Carolina and Vermont. Maine and Arizona have each gone through four statewide elections cycles using this system, and public support for the system is overwhelming.

In Alaska, sponsors of citizen's initiative to adopt of system of Clean Elections recently submitted more than 32,000 signatures to the Lt. Governor's Office to place a Clean Elections question on the 2008 ballot. In all likelihood, the initiative will qualify for the ballot, and polls indicate there will be strong support for it.

The Alaska Legislature has a limited amount of time to review and consider this alternative system of campaign financing. Given its success in other states and the need to rebuild Alaskans' confidence in our political system, I urge you to join me in supporting SB 182, the Alaska Clean Elections Act.

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SB 182
 () Publish Date: _____

Identifier (file name): SB182-DOA-APOC-2308 Dept. Affected: DOA
 Title An Act establishing a clean elections program in the state. RDU AK Public Offices Commission
 Component AK Public Offices Commission
 Sponsor Senator Wielechowski
 Requester Senate Community and Regional Affairs Component Number 70

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	480.0		480.0	480.0	480.0	480.0	480.0
Travel							
Contractual	85.0		85.0	85.0	85.0	85.0	85.0
Supplies	26.0		1.4	1.4	1.4	1.4	1.4
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	591.0	0.0	566.4	566.4	566.4	566.4	566.4

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	591.0		566.4	566.4	566.4	566.4	566.4
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	591.0	0.0	566.4	566.4	566.4	566.4	566.4

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time	6.0	6.0	6.0	6.0	6.0	6.0	6.0
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill creates a clean elections section within APOC. Funding will be needed for three accounting positions, two compliance officers, administrative assistant and administrative support. Clean Election's staff is responsible for disseminating public funds to qualified candidates throughout the duration of their campaigns. Additionally, staff is responsible for certifying the qualifications of candidates eligible for receiving public funding. During the course of the campaigns, clean election staff must monitor all campaign spending for compliance with the provisions of the clean elections act.

Prepared by: Brooke Miles, Executive Director
 Division: APOC
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-334-1726
 Date/Time 2/5/08 12:00 AM
 Date _____

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 162
 () Publish Date: _____

Identifier (file name): SB162-DOA-APOC-2-13-08 Dept. Affected: Administration
 Title: "An Act establishing a clean elections program in the state." RDU: Alaska Public Offices Commission
 Component: Alaska Public Offices Commission
 Sponsor: Senators Wielecnowski, McGuire, Ellis Component Number: 70
 Requester: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES							
Personal Services	572.5		572.5	572.5	572.5	572.5	572.5
Travel	21.5		21.5	21.5	21.5	21.5	21.5
Contractual	85.0		85.0	85.0	85.0	85.0	85.0
Supplies	35.0		2.0	2.0	2.0	2.0	2.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous	-	-	-	-	-	-	-
TOTAL OPERATING	714.0	0.0	681.0	681.0	681.0	681.0	681.0

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	714.0		681.0	681.0	681.0	681.0	681.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	714.0	0.0	681.0	681.0	681.0	681.0	681.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time	7.0	0.0	7.0	7.0	7.0	7.0	7.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

This bill creates a clean elections section within APOC. Funding will be needed for a hearing officer, three accounting positions, two compliance officers, an administrative assistant and administrative support. Funding is also required for additional Commission meetings. Clean Election's staff is responsible for disseminating public funds to qualified candidates throughout the duration of their campaigns. Additionally, staff is responsible for certifying the qualifications of candidates eligible to receive public funding. During the course of the campaigns, clean election staff must monitor all campaign spending for compliance with the provisions of the clean elections act. The bill also provides state funding to candidates for Governor, Lieutenant Governor, State Senator, and State Representative. Several funding scenarios are presented below.

Prepared by: Brooke Miles, Executive Director
 Division: Alaska Public Offices Commission
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 465-5871
 Date/Time 2/13/08 12:00 AM
 Date 2/13/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO. SB 102

ANALYSIS CONTINUATION

It is difficult to accurately estimate the cost of providing public funds to candidates under this initiative. The cost will depend on the number of candidates that choose to participate in the public campaign financing program, and several other factors. Because public funding is optional, candidates cannot legally be mandated to use it, and some candidates are likely to not choose public funding, lowering the total cost of the program. Other scenarios could be analyzed in addition to the examples below.

The following cost analysis is based on 25%, 50%, 75%, and 100% participation. It was calculated using the number of primary and general election candidates in the 2006 election:

PRIMARY: (dollar amounts in thousands)

# of Candidates	Office	Amount	25%	50%	75%	100%
13	Gov	250.0	812.5	1,625.0	2,437.0	3,250.0
8	Lt Gov	150.0	300.0	600.0	900.0	1,200.0
23	Senate	24.0	130.5	261.0	391.5	522.0
92	House	16.0	368.0	736.0	1,104.0	1,472.0
Sub-Totals:			1,611.0	3,222.0	4,832.5	6,444.0

GENERAL: (dollar amounts in thousands)

# of Candidates	Office	Amount	25%	50%	75%	100%
6	Gov/Lt	500.0	750.0	1,500.0	2,250.0	3,000.0
20	Senate	36.0	180.0	360.0	540.0	720.0
72	House	16.0	432.0	864.0	1,296.0	1,728.0
Sub-Totals:			1,362.0	2,724.0	4,086.0	5,448.0
Grand Totals:			2,973.0	5,946.0	8,918.5	11,892.0

**Statement of costs for ballot measure 07CASE
Prepared by the Alaska Public Offices Commission**

As required by AS 15.45.090(a)(4), the Alaska Public Offices Commission has prepared the following statement of costs to the State should the law proposed in Initiative 07CASE be approved by voters.

Costs

This initiative establishes public funding for state candidates who agree to limit their campaign spending. The Commission will be responsible for a new section which will administer the provisions of AS 15.14, for additional oversight of political campaigns.

Administrative Costs

Funding is required for 6 positions: an Accountant V, who will lead the section, an Accounting Technician III who will provide assistance to the manager and supervise the support staff; a Regulations Specialist/Compliance Auditor who will initially draft the regulations required to implement the act and then act as the chief auditor, two Administrative Assistants and an Administrative clerk.

Additional funding is needed to support the new positions, including supplies, equipment and support services. One-time funding is required to provide office space and work stations, with standard equipment, for the new employees.

The Alaska Public Offices Commission, Department of Administration, expects that general funds will be required for the following (dollar amounts are in thousands):

One-Time Costs: \$ 112.4

One-time costs include office space for six employees including parts, labor, chairs, computers, workstation, filing cabinets, etc.

Salary and Benefits Costs: \$ 409.7

Yearly Operations Costs: \$ 81.7

Total First Year Costs: \$ 603.8

Total Continuing Costs: \$ 491.4

The initiative would also require the State Department of Administration to implement a new debit card program for disbursing funds to candidates. The cost to implement such a program cannot be accurately estimated at this time without costly research.

The Division of Elections will provide access to the voter registration database, so that Commission staff can verify that makers of campaign contributions are registered voters in the appropriate election districts.

Campaign Financing Costs

It is difficult to accurately estimate the cost of providing public funds to candidates under this initiative. The cost will depend on the number of candidates that choose to participate in the public campaign financing program, and several other factors. Because public funding is optional, candidates cannot legally be mandated to use it, and some candidates are likely to not choose public funding, lowering the total cost of the program. Other scenarios could be analyzed in addition to the examples below.

The following analysis is based on the percentages of candidates who chose to enroll in a similar program in Maine. Maine, along with Arizona, has the longest history with this program (4 election cycles). Although the numbers of statewide and district offices differ from state to state, the following cost analysis assumes an identical percentage of participation in Alaska as in Maine during the first year of operation (33%). The following is calculated using the number of primary and general election candidates in the 2006 election:

Primary Election (dollar amounts are in thousands)

# Candidates	# Participating Candidates	Office	Amount	Total
13	4	Gov.	\$ 250.0	\$ 1,000.0
8	3	Lt. Gov.	\$ 150.0	\$ 450.0
23	8	Senate	\$ 24.0	\$ 192.0
92	31	House	\$ 16.0	\$ 496.0
TOTAL PUBLIC FUNDING FOR PRIMARY ELECTION BASED ON 33% PARTICIPATION				\$ 2138.0

General Election (Dollar amounts are in thousands)

# Candidates	# Participating Candidates	Office	Amount	Total
6	2	Gov./Lt..	\$ 500.0	\$ 1,000.0
20	7	Senate	\$ 36.0	\$ 252.0

TOTAL PUBLIC FUNDING FOR GENERAL ELECTION
BASED ON 33% PARTICIPATION \$ 1828.0

**TOTAL COSTS TO THE STATE
BASED ON 33% PARTICIPATION \$3966.0**

The following analysis is based on the number of primary and general election candidates in the 2006 election and a scenario in which every candidate qualifies for, and chooses public funding:

Primary Election (dollar amounts are in thousands)

<u># of Candidates</u>	<u>Office</u>	<u>Amount</u>	<u>Total</u>
13	Gov.	\$ 250.0	\$ 3,250.0
8	Lt. Gov.	\$ 150.0	\$ 1,200.0
23	Senate	\$ 24.0	\$ 522.0
92	House	\$ 16.0	\$ 1,472.0

TOTAL PUBLIC FUNDING FOR PRIMARY ELECTION: \$ 6,474.0

General Election (Dollar amounts are in thousands)

<u># of Candidates</u>	<u>Office</u>	<u>Amount</u>	<u>Total</u>
6	Gov./Lt..	\$ 500.0	\$ 3,000.0
20	Senate	\$ 36.0	\$ 720.0
72	House	\$ 24.0	\$ 1,728.0

TOTAL PUBLIC FUNDING FOR GENERAL ELECTION: \$ 5,448.0

TOTAL POTENTIAL COSTS TO THE STATE: \$11,922.0

The proposal also contains additional funding mechanisms for different situations, which could increase the cost of the program.

For example, if a qualified participating candidate is outspent by her or his opponent, who has not opted for public funding, the state will match the opponent's spending by giving the like amount of funds to the qualified candidate. These costs may be very large. For example, if a qualified candidate is outspent by a nonparticipating opponent during the primary election, the state may provide additional funding up to three times the amount provided above.

Because this program involves many interacting factors, it is difficult to accurately predict program costs. We have analyzed administrative costs, potential program costs based on a similar program in Maine, potential program costs if every Alaskan candidate chooses to enroll, and a discussion of the factors that interact in determining the costs of the program.

ALASKA STATE LEGISLATURE

Co-chair, Joint Armed Services
Committee

•
Resources Committee

•
Judiciary Committee

•
Transportation Committee



State Capitol, Rm. 115
Juneau, AK 99801
(907) 465-2435
Fax: (907) 465-6615

716 W. 4th Ave. Ste. 440
Anchorage, AK 99501
(907) 269-0102
Fax: (907) 269-6122

SENATOR BILL WIELECHOWSKI

January 21, 2008

Senator Donny Olson, Chair
Senate Community & Regional Affairs Committee
Room 514, State Capitol
Juneau, Alaska 99801

I respectfully request a hearing on SB 182, the Alaska Clean Elections Act.

Under Clean Elections systems, candidates have the option of accepting limited public financing for their campaigns if they agree to forego all private fundraising. Goals are to:

- ensure that candidates are not beholden to or unduly influenced by campaign donors or special interests once elected;
- provide the opportunity for serious candidates from a diversity of backgrounds to run for public office; and
- strengthen public trust and confidence in government.

Clean Elections is law in seven states: Arizona, Connecticut, Maine, New Jersey, New Mexico, North Carolina and Vermont. Maine and Arizona have each gone through four statewide elections cycles using this system and an overwhelming majority of their residents enthusiastically support it.

In Alaska, sponsors of citizen's initiative to adopt of system of Clean Elections recently submitted more than 32,000 signatures to the Lt. Governor's Office to place a Clean Elections question on the 2008 ballot. In all likelihood, the initiative will qualify for the ballot, and polls indicate there will be strong support for it.

The Alaska State Legislature has a short period in which to review and consider this alternative system of campaign financing. I therefore request that a hearing on this proposal be scheduled as soon as feasible.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Wielechowski".

Senator Bill Wielechowski



February 5, 2008

Honorable Donald Olson, Chair
Senate Community and Regional Affairs Committee
Alaska State Capitol, Room 514
Juneau, AK 99801-1182

RE: SB 182 (Wielechowski)—Support

Dear Chair Olson:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the Senate Community and Regional Affairs Committee to support SB 182, authored by Senator Bill Wielechowski and co-sponsored by Senators Leil McGuire and Johnny Ellis.

SB 182 is a "clean elections" bill. AARP shares a concern of many citizens and elected officials that money determines who runs for office, who wins elections, and who gains power in politics. The political agenda should be set by ordinary citizens and not major campaign contributors.

States like Arizona and Maine have passed "clean elections" laws that allow candidates to run for office using public funds rather than private money from special interest groups, PACs, or wealthy individuals. The results from those states have been extremely encouraging: the influence of big money has gone down while competitive races, voter turnout, and civic engagement have all gone up.

AARP believes that "clean elections" systems are proven ways to improve integrity in government and should be adopted.

AARP urges an "AYE" vote on SB 182.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Kookesh
Senator Stevens
Senator Thomas
Senator Wagoner
Senator Wielechowski

Ginny Austerman

From: Michelle Sydeman
Sent: Tuesday, February 05, 2008 5:13 PM
To: Ginny Austerman
Cc: Sen. Bill Wielechowski; mindy.rowland@alaska.gov; Miles, Brooke (DOA); chris.ellingson@alaska.gov
Subject: Clean Elections costs from the Lt. Gov's Office
Attachments: Statement of Costs 07CASE-FINAL.doc

Hi Ginny,

This is the cost information that was included in all Clean Elections initiative booklets. It estimates that the cost of Clean Elections would be about \$4.4 million if 33% of candidates participated up to \$12.4 million if all candidates participated. I will work with Mindy, Jason and Brooke to get this turned into a fiscal note as soon as possible.

I am terribly sorry for the confusion today. Please extend our apologies to Sen. Olson. We anticipated that a complete fiscal note would be available.

Michelle

From: Hooley, Jason M (GOV) [mailto:jason.hooley@alaska.gov]
Sent: Tuesday, February 05, 2008 4:58 PM
To: Michelle Sydeman
Subject: 07CASE statement of cost

Is attached.

Tomorrow morning, I'll work to get Elections and APOC on the same page regarding costs/potential costs.

JASON HOOLEY
OFFICE OF LIEUTENANT GOVERNOR SEAN PARNELL
907 . 465 . 3520

SB

204

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/16/08

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/12/08

Community and Regional Affairs Committee considered SENATE BILL NO. 204

SB 204 MUNI TAX EXEMPTION: COMBAT DEATHS

"An Act relating to an optional exemption from municipal property taxes for residences of widows and widowers of certain members of the armed forces of the United States; and providing for an effective date."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
<input checked="" type="checkbox"/> Same Title
<input type="checkbox"/> New Title
<hr/>
HOUSE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Initial	Zero	FN#
DCEED	1/31/08			✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Initial	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURE AND RECOMMENDATION	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	THOMAS	✓			
	WAGONER	✓			
	FOOKER	✓			
	STEVENS	X			
CHAIR:	OLSON	X			



25th ALASKA STATE LEGISLATURE

SENATE REPUBLICAN CAUCUS

www.aksenateminority.com

SENATOR GENE THERRIALT, MINORITY LEADER
STATE CAPITOL, ROOM 427, 465-4797 (FAX 465-3884)

SENATOR CON BUNDE
SENATOR FRED DYSON
SENATOR TOM WAGONER
SENATOR GARY WILKEN

Fact Sheet for : Senate Bill 204
Sponsor: Senator Gene Therriault

Contact: Heather Brakes, 465-4797

Short Title: Property Tax Relief for Military Widows and Widowers

Summary:

- Provides a partial or whole municipal property tax exemption to the widow or widower of a member of the United States' armed forces who is killed in the line of duty.
- Requires that the deceased served in active duty capacity, was eligible for hostile fire or imminent danger pay, and died within 90 days if having sustained combat related injuries.
- Requires that the widow or widower be a permanent Alaska resident.
- Allows a municipality the discretion to shape and opt-in to the property tax exemption.

Benefits:

- Provides financial relief to families of members of the United States' armed forces killed during combat operations.
- Honors the sacrifices made by members of the armed services and their families while protecting the United States from foreign aggression.

Background:

- Operations Enduring Freedom and Iraqi Freedom began on October 7, 2001 and March 20, 2003. Heeding their nation's call, men and women of the United States' armed forces left behind friends and family to serve our country. Sadly, not all returned home. In Alaska alone, over eighty soldiers have died in the Iraq and Afghanistan theatres of war. Many of these fallen soldiers' families have chosen to make Alaska their home. This bill will help to ease their financial and emotion burdens as well as to offer a token of appreciation by the citizens of Alaska.

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
1292 Sadler Way, Suite 308
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 485-4797
Fax: (907) 465-3884
SENATE DISTRICT F

Memorandum

To: The Honorable Senator Donald Olson
Chair Senate Community and Regional Affairs

From: Senator Gene Therriault
Senate Minority Leader

A handwritten signature in cursive script that reads "Gene Therriault".

Date: January 21, 2008

Re: SB 204 – Property Tax Relief for Military Widows and Widowers

Senate Bill 204 (Property Tax Relief for Military Widows and Widowers) honors the sacrifices made by members the United States' armed forces and their families by granting municipalities the option of providing a partial or whole property tax exemption to a widow or widower of a member of the United States' armed forces killed in the line of duty. Though tragically freed of their military obligation to live in Alaska, many of these fallen heroes' families choose to make Alaska their home. SB 204 provides a measure of financial relief as the transition from military to civilian life is made.

In deference to Alaska's economic and demographic diversity, SB 204 refrains from dictating the provisions of the property tax exemption by granting authority to each municipality to implement provisions such as tax exemption rate, qualification retroactivity, and exemption duration.

I respectfully request that you join me in honoring our armed forces by scheduling Senate Bill SB 204 for a Community and Regional Affairs Committee hearing.

Alaska State Legislature

**SENATOR
GENE THERRIAULT**

Mailing Address
1292 Sadler Way, Suite 308
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

Sponsor Statement

Senate Bill 204

"An Act relating to an optional exemption from municipal property taxes for residences of widows and widowers of certain members of the armed forces of the United States; and providing for an effective date."

Alaska Statute 29.45.050 (i)(2) provides authority for a municipality to:

"...exempt from taxation the assessed value that exceeds \$150,000 of real property owned and occupied as a permanent place of abode by a resident who is a disabled veteran, including a person who was disabled in the line of duty while serving in the Alaska Territorial Guard."

Senate Bill 204 extends a similar token of gratitude by granting municipalities the option of providing a partial or whole property tax exemption to a widow or widower of a member of the United States' Armed Forces killed in the line of duty. To qualify for the property tax exemption, the deceased must have qualified for hostile fire or imminent danger pay and died within 90 days if having sustained combat related injuries. Furthermore, the exemption applies only to widows and widowers who choose to make Alaska their home; their real property must be owned in Alaska and serve as their permanent place of abode.

In deference to Alaska's economic and demographic diversity, SB 204 refrains from dictating the provisions of the property tax exemption by granting authority to each municipality to implement provisions such as tax exemption rate, qualification retroactivity, and exemption duration.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 204
 () Publish Date: _____

Identifier (file name): SB204-CED-CRA-01-31-08 Dept. Affected: DCCED
 Title: Muni Tax Exemptions, Combat Death RDU: Comm Asst & Ec Dev (405)
 Component: Community & Regional Affairs
 Sponsor: Therriault
 Requester: Senate Community & Regional Affairs Component Number: 2879

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES ()							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation would allow municipalities to partially or wholly by ordinance exempt from taxation real property owned and occupied by a resident who is the widow or widower of certain members of the armed forces of the United States. The residence must be a permanent place of abode.

This is a local optional property tax exemption not reimbursable by the State. It would have no fiscal impact on the operations of the division. The amount of municipal residential real property potentially subject to this tax exemption is indeterminate.

Prepared by: Tara Jollie, Director
 Division: Community and Regional Affairs
 Approved by: Emil R. Notti, Commissioner
Commerce, Community, and Economic Development

Phone 907-269-7959
 Date/Time 1/31/08 7:07 PM
 Date 1/31/2008



Fairbanks North Star Borough

Office of the Mayor

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1300

Fax 907/459-1102

Email mayor@co.fairbanks.ak.us

January 29, 2008

The Honorable Senator Gene Therriault
State Capitol
Juneau, AK 99801

Dear Senator Therriault,

I would like to thank you for your sponsorship of SB 204, also known as the Sgt. Irving Hernandez Act of 2007.

The greater Fairbanks area incorporates a seamless community of military and civilian residents. Those of us residing here hold an immense degree of respect and value for our military families. However, there is no provision by which to allow for the same property tax exemptions for the spouses of our fallen active duty military as there exists for our veterans.

This legislation allows our community to better honor the sacrifices and contributions of our active duty residents and their families.

The Fairbanks North Star Borough fully supports the passage of this legislation.

Regards,

Jim Whitaker, Mayor



Fairbanks North Star Borough

Assembly

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267 907/459-1401

Fax 907/459-1224

Email: clerks@co.fairbanks.ak.uswww.co.fairbanks.ak.us

January 25, 2008

The Honorable Senator Gene Theriault
State Capitol
Juneau, Alaska 99801-1182

Re: Senate Bill 204

Dear Senator Theriault,

On behalf of the Fairbanks North Star Borough Assembly and myself as presiding officer, I would like to thank you for introducing Senate Bill 204 - Property Tax Relief for Military Widows and Widowers.

In August of 2007 past Assemblymember Hank Bartos and Mayor Jim Whitaker were approached and met with Mrs. Susan Hernandez, the widow of Sgt. Irving Hernandez who had been stationed at Fort Wainwright Army Post in Fairbanks and who was killed by sniper fire while serving in the United States Army in Iraq. After the meeting with Ms. Hernandez, Mr. Bartos and Mayor Whitaker met with the Interior Delegation and suggested that a bill be introduced that would exempt a widow or a widower of a member of the United States Armed Forces who had been killed in the line of duty, from property taxes. We are grateful that you have moved forward with the information presented during this meeting and have introduced Senate Bill 204.

Sadly more than 80 soldiers stationed in Alaska have been killed in Iraq and Afghanistan. A property tax exemption is a very small way to show our gratitude for the sacrifices made by the military members and their families.

The Fairbanks North Star Borough supports Senate Bill 204 and urges the Alaska State Legislature to support it, providing some small measure of support and relief to the Alaskan families left behind by brave young men and women.

Sincerely,

Nadine Winters
Presiding Officer
Fairbanks North Star Borough Assembly

r/encl.

cc: FNSB Assembly, Mayor Whitaker

**CITY OF NORTH POLE
RESOLUTION 07- 13**

**A RESOLUTION OF THE CITY OF NORTH POLE URGING THE ALASKA
STATE LEGISLATURE TO AMEND STATE STATUTE TO ALLOW FOR
AN EXEMPTION OF MUNICIPAL PROPERTY TAXES FOR SURVIVING
SPOUSES OF MEMBERS OF THE ARMED FORCES WHO HAVE LOST
THEIR LIFE IN ACTIVE DUTY COMBAT**

WHEREAS, the North Pole City Council and the North Pole community have the greatest pride and respect for the members of the Armed Forces and strongly support them; and

WHEREAS, the war in Iraq began on March 20, 2003 and in the years since, thousands of men and women have made sacrifices for their country and for some the sacrifice has meant their lives; and

WHEREAS, the sacrifice made by these brave men and women extends to their families who struggle both emotionally and financially after their death; and

WHEREAS, the war has claimed more than 3700 casualties nationwide. The statistics for Alaskans killed in action as of September 25, 2007 are 15 Alaska residents, 30 soldiers from Ft. Wainwright, 1 from Eielson Air Force Base, 52 from Ft. Richardson and 5 from Elmendorf Air Force Base; and

WHEREAS, several surviving spouses have chosen to make Alaska their permanent home; and


WHEREAS, everything that can be done should be done to ease the burden placed upon surviving spouses and their children; and

WHEREAS, a small way to extend our gratitude to these families is to offer surviving spouses of military members who have lost their life in combat, an exemption of municipal property taxes.

NOW, THEREFORE, BE IT RESOLVED, that the North Pole City Council supports a change to state statute that would allow for the municipal property tax exemption for the surviving, un-remarried spouse of a military member killed in active duty combat.

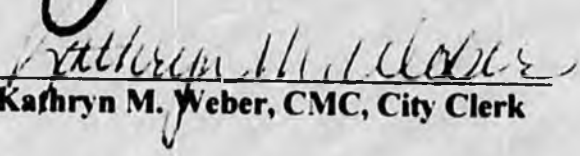
BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Honorable Governor Sarah Palin and the Alaska Interior Delegation.

PASSED AND APPROVED by a duly constituted quorum of the City Council of the City of North Pole on October 1, 2007.



Douglas W. Isaacson, Mayor

ATTEST:



Kathryn M. Weber, CMC, City Clerk

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By: Hank Bartos
Introduced: 09/13/07
Amended: 09/13/07
Adopted: 09/13/07

**THE FAIRBANKS NORTH STAR BOROUGH
RESOLUTION NO. 2007 - 38**

A RESOLUTION URGING THE ALASKA STATE LEGISLATURE TO AMEND STATE STATUTE TO ALLOW FOR AN EXEMPTION OF RESIDENTIAL MUNICIPAL PROPERTY TAXES FOR SURVIVING SPOUSES OF MEMBERS OF THE ARMED FORCES WHO HAVE LOST THEIR LIFE IN ACTIVE-DUTY COMBAT.

WHEREAS, the Fairbanks North Star Borough Assembly and the Fairbanks community have the greatest pride and respect for the members of the Armed Forces and strongly support them; and

WHEREAS, the war in Iraq began in March of 2003 and in the years since thousands of men and women have made sacrifices for their country, for some the sacrifice has meant their lives; and

WHEREAS, the sacrifice made by these brave men and women extends to their families who struggle both emotionally and financially after their death; and

WHEREAS, the war has claimed more than 3700 casualties nationwide and more than 100 of those were military members stationed at military bases in Alaska; and

WHEREAS, several surviving spouses have chosen to make Alaska their permanent home; and

WHEREAS, everything that can be done should be done to ease the burden placed upon surviving spouses and their children; and

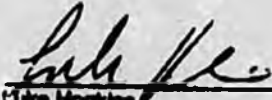
WHEREAS, a small way to extend our gratitude to these families is to offer surviving spouses of military members who have lost their life in combat an exemption of municipal property taxes.

NOW, THEREFORE, BE IT RESOLVED, that the Assembly of the Fairbanks North Star Borough supports a change to state statute that would allow for the residential municipal property tax exemption for the surviving spouse of a military member killed in active duty combat.

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BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Honorable Governor Sarah Palin and the Alaska Interior Delegation.

PASSED AND APPROVED THIS 13th DAY OF SEPTEMBER 2007.



Luke Hopkins
Presiding Officer

ATTEST:



Mona Lisa Dreiser, CMC
Municipal Borough Clerk

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Ayes: Bartos, Beck, Frank, Foote, Winters, Musick, Therrien, Hopkins
Nays: None
Excused: Rex

By: Jim Whitaker, Mayor
Introduced: August 16, 2007

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5 FAIRBANKS NORTH STAR BOROUGH

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7 RESOLUTION NO. 2006 -

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9 A RESOLUTION THANKING THE INTERIOR DELEGATION TO THE ALASKA STATE
10 LEGISLATURE FOR THE SPONSORSHIP OF THE SGT. IRVING HERNANDEZ ACT
11 ALLOWING FOR THE EXEMPTION OF MUNICIPAL PROPERTY TAXES FOR
12 SURVIVING SPOUSES OF MEMBERS OF THE ARMED SERVICES WHO HAVE
13 LOST HIS OR HER LIFE IN ACTIVE COMBAT DUTY
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15 WHEREAS, the greater Fairbanks area incorporates a seamless
16 community of military and civilian residents; and
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18 WHEREAS, those of us residing here hold an immense degree of respect
19 and value for our military families; and
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21 WHEREAS, there is no provision by which to allow for the same property
22 tax exemptions for the spouses of our fallen active duty military as there exists for our
23 veterans; and
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25 WHEREAS, the Fairbanks North Star Borough desired to better honor the
26 contributions of our active duty residents and their families; and
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28 WHEREAS, by sponsoring this legislation, the members of the Interior
29 Delegation have acted with forethought to rectify this situation in order for
30 municipalities to better honor the sacrifices of our fallen active duty military by initiation
31 of the above mentioned legislation; and
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33 WHEREAS, the Fairbanks North Star Borough is grateful for their efforts;
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NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Fairbanks North Star Borough joins the Mayor and the many borough residents who wish to honor our armed service personnel in thanking the following legislators, recognizing them as community role models for their efforts in the Alaska Legislature with the sponsorship of the Sgt. Irving Hernandez Act of 2007:

Senator Gene Therriault; Senator Joe Thomas; Senator Gary Wilken; Representative John Coghill; Representative David Guttenberg; Representative John Harris; Representative Scott Kawasaki; Representative Mike Kelly; and Representative Jay Ramras

PASSED AND APPROVED THIS __ DAY OF _____, 2006.

Luke Hopkins
Presiding Officer

ATTEST:

APPROVED:

Mona Lisa Drexler, MMC
Municipal Borough Clerk

A. René Broker
Borough Attorney

SB

228

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/27/08

FURTHER: State Affairs

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 03/18/08

Community & Regional Affairs Committee considered SPONSOR SUBSTITUTE FOR SENATE BILL NO. 228

SB 228 MUNICIPAL LAND USE REGULATION

"An Act relating to and permitting certain uses and occupancies of real property that do not comply with changes made to municipal land use ordinances."

and recommends:

- be replaced with SCS or CS _____ ()
- adopt previous SCS or CS _____ ()
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:
<input checked="" type="checkbox"/> Same Title
<input type="checkbox"/> New Title
HOUSE BILL:
<input type="checkbox"/> Same Title
<input type="checkbox"/> Technical Title Change
<input type="checkbox"/> New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
CEC	2/28/08			✓	

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Thomas				✓
	WILLIAM STARKS				✓
	KOOKESH			✗	
CHAIR:	Olson	✓			

SPONSOR STATEMENT

Senate Bill 228 Municipal Land Use Regulation

The freedoms we enjoy are inextricably linked to the property we own. This individual right should be carefully preserved and respected in the face of advancing local government while at the same time allowing a community some measure of self determination. This bill ensures a balance between the two sides of this tension.

SB 228 has three parts that govern the changing of local land use ordinances. The first part provides that if an ordinance is changed to prohibit a use of land that was previously permitted, the use of the land that was permitted under the old ordinance must be allowed to continue unless it is determined that the use constitutes a common law nuisance.

The second part of SB 228 provides that if a municipality passes an ordinance that prohibits a home business, which was permitted under the old ordinance, the owner of the property must be allowed to continue his or her business until the ownership of the property is transferred. If that home business owner applies for a change or expansion, the municipality cannot refuse that application unless it would have a "negative" effect on the neighbors and area. The factors that are suggested are the same as the previous section.

The third part of SB 228 protects the use of property owned by older or disabled Alaskans by prohibiting municipalities from enforcing a change in the ordinance for ten years or until the ownership of the property is transferred, whichever is first. This part of the bill recognizes that it would not be a right use of governmental power to force older or disabled Alaskans to immediately alter the use of their land, simply because an ordinance is passed. Alaskans have traditionally respected the privacy of individuals and this bill recognizes that this privacy should extend to land use.

SENATOR FRED DYSON

Contact: Jeremy Thompson
(907) 465-2199

February 2, 2008

ALASKA STATE SENATE

Contact:**Interim Address:**

10928 Eagle River Road

Eagle River, AK 99577

(907)-694-6683

Fax# (907)-694-1015

**Session:**

(907)-465-2199

FAX# (907)-465-4587

State Capitol

Room 121

Senator Fred Dyson

SB 228 Municipal Land Use Restrictions

SECTIONAL ANALYSIS

*** Section 1.** Amends AS 24.10.200 by adding the "regulation of the use of real property" to the list of limitations on the power of local government rule.

***Sec. 2.** Adds the new section AS 29.40.045. The section is divided into three parts. Part (a) says that if an ordinance governing land use is changed, and there exists a piece of property was being used for purposes that were previously permitted, that use must be allowed to continue unless the use constitutes a nuisance defined by common law. Part (b) says that if an ordinance is changed to prohibit a home business that would have been previously permitted, the home business must be allowed to continue until the property has changed hands. If the owner of the property wishes to expand or change the business, he must be permitted to do so unless the municipality determines that the change would have a negative effect on the area. Part (c) says that if an ordinance is passed governing the land use of property held by a disabled person, the use previously permitted must be allowed to continue until the ownership is transferred, and the section gives the definition of "disabled person" and "disabled veteran."

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: SS SB 228
 () Publish Date: _____

Identifier (file name): SB228SS-CED-CRA-02-28-08
 Title Municipal Land Use Regulation
 Sponsor Dyson
 Requester Senate Community and Regional Affairs

Dept. Affected: DCCED
 RDU Comm Asst & Ec Dev (405)
 Component Community & Regional Affairs
 Component Number 2879

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation would allow property owners to continue an existing use of property if a municipal ordinance changes the permitted uses. The bill contains three sections which would allow for the existing use to continue if:

- 1) the existing use does not constitute a nuisance;
- 2) the existing use is a home business which use may continue until the ownership changes; or
- 3) the existing owner is at least 65 years of age, a disabled veteran or a disabled person existing use may continue for up to 10 years or until the ownership changes, whichever comes first.

This legislation has no fiscal impact on the operations of the division.

Prepared by: Tara Jollie, Director
 Division: Community and Regional Affairs
 Approved by: Emil R. Notti, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone 907.269.7959
 Date/Time 2/28/08 4:32 PM
 Date 2/28/2008

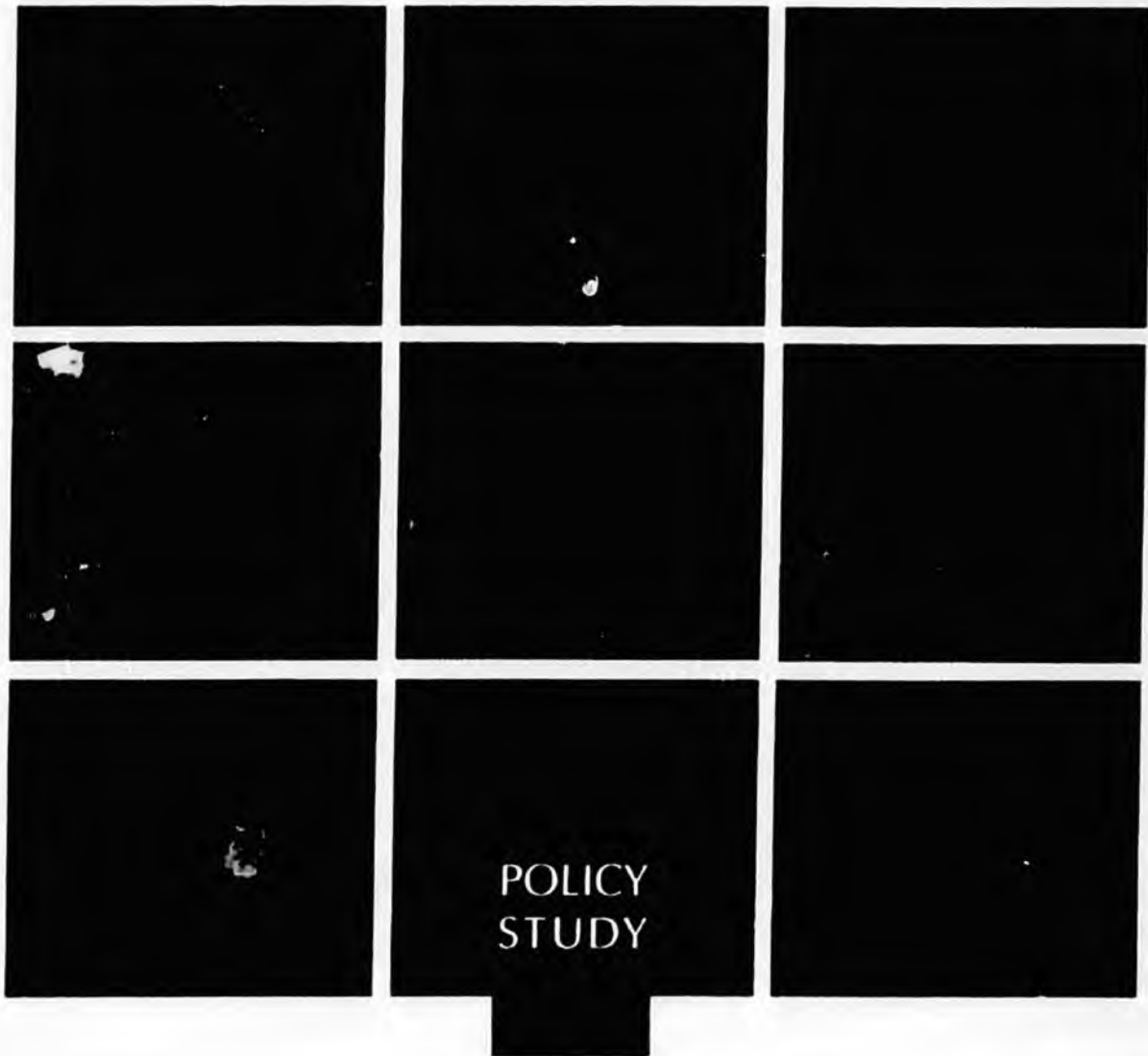


Reason

April 2006

STATEWIDE REGULATORY TAKINGS REFORM: EXPORTING OREGON'S MEASURE 37 TO OTHER STATES

By Leonard C. Gilroy, AICP



Statewide Regulatory Takings Reform: Exporting Oregon's Measure 37 to Other States

By Leonard C. Gilroy, AICP

Executive Summary

Since the widespread adoption of municipal zoning in the United States in the early twentieth century, there has been an expansion in the character and scope of state and local land controls and an increasing recognition that land use regulation significantly infringes on private property rights.

The nature of land use regulation has evolved beyond the common law, nuisance-based tradition that characterized the first century after the nation's founding. This nuisance-based approach was primarily focused on preventing harm to the property rights of others and giving property owners wide latitude in determining the best use of their land.

By contrast, contemporary land use regulation often uses public policy to mandate the private provision of amenities that benefit the community-at-large. As the regulatory scheme influencing local land use has grown more prescriptive and restrictive, there has been an increasing curtailment of private property rights. Landowners in many communities nationwide have been restricted in their ability to use their land in the ways that they had intended when they purchased their property, dramatically reducing their property's value and imposing an economic hardship on them.

The expanding reach of state and local land use regulation has led to a burgeoning property rights movement and increased calls for: (1) statutory or constitutional measures to reduce the infringement on private property rights resulting from government regulation (so called "regulatory takings"), and (2) compensation for landowners when their property rights have effectively been regulated away.

The experience of Oregon points to a new way of establishing clear boundaries for regulation and balancing the rights of private property owners with government's right to enact policies advancing the public interest. After decades of burdensome state and local land use regulation, a majority of Oregon voters took a decisive stand in favor of property rights in November 2004 and passed Measure 37, a ballot initiative designed to provide relief to landowners whose properties have been devalued by three decades of regulation and protect Oregon's property owners from economic hardship that may result from future regulations.

Measure 37 requires that local governments either: (1) compensate landowners when land use restrictions reduce the value of their property, or (2) waive the restrictions and reinstate the rights that property owners had at the time they bought their land.

Citizens, activists, and elected officials across the nation can look to Measure 37 as a model for regulator reform.

Measure 37 represents a major advance for the national property rights movement by establishing a system that restores the rights of private landowners that had previously been taken away via regulatory action. It can be seen as simply having revealed the hitherto hidden costs of the state's heavy-handed approach to land use regulation and redirecting these costs in a more equitable and just manner that respects the American tradition of strong private property rights. Measure 37 also provides a check on government power by ensuring that state and local governments adequately weigh the costs and benefits of public action. In fact, Oregon's experience suggests that property rights are critical to successful planning efforts in the United States and that urban planning may not be sustainable unless it incorporates property rights into the regulatory framework.

The national property rights movement has been galvanized in recent years by Measure 37's passage, as well as widespread popular disenchantment with the abuse of eminent domain highlighted by the U.S. Supreme Court's *Kelo vs. New London* decision. Public recognition of the need to protect the constitutional rights of private property owners has never been higher.

Citizens, activists, and elected officials across the nation can look to Measure 37 as a model for regulatory reform as they continue the push to protect private property rights from the expanding reach of government and prevent landowners from being forced to bear the hidden costs associated with government regulation.

Part 3

Addressing the Impacts of Land Use Regulation

A. Property Rights and the Evolution of Land Use Regulation

With the rise of municipal zoning in the United States in the early twentieth century and the subsequent expansion in the character and scope of state and local land controls has come an increasing recognition that land use regulation can significantly infringe on private property rights. Historically, zoning was an outgrowth of the common law of nuisance and trespass, which governed land use since the country's inception and essentially defined and limited each property owner's rights to those that do not inflict harm upon or diminish the rights of his neighbors.

Nuisance laws are relevant to the discussion of regulatory takings because not all regulations—particularly those that prevent harm to the rights of others—infringe on private property rights. Under the common law of nuisance and trespass, the rights associated with property ownership do not include the right to create unlawful nuisances or violate another's property rights.¹⁵ If a nuisance-based regulation serves to prevent a landowner from engaging in activities that would harm or violate the rights of others, such as polluting a stream that runs through a neighbor's land, then the landowner has no right to compensation because he has no right to use his property in such a manner in the first place.

Conversely, the common law of nuisance or trespass does preserve for landowners the right to engage in activities on their land that do not violate the property rights of others. If Landowner A wants to stop Landowner B from engaging in some activity that does not directly impact his right to use his property as he sees fit, Landowner A can offer to either (1) pay Landowner B to stop engaging in that activity for a period of time, or (2) purchase an easement from Landowner B to permanently stop the activity. The contemporary use of conservation easements and purchase of development rights programs are consistent with this approach to land regulation.

Municipal zoning can be seen as an attempt to codify and extend nuisance law on a city-wide scale. It is the product of an attempt by local governments to prevent land uses which, while not necessarily a nuisance in and of themselves, are potentially offensive or harmful to others,

particularly in areas with pre-existing residential or commercial development.¹⁶ Zoning is intended to avoid nuisances by dividing a city into districts and prohibiting certain types of land uses within each district, effectively segregating land uses.¹⁷ It is within this context that zoning restrictions have been upheld as a valid exercise of government "police power," through which national, state, and local legislative bodies enact regulations in the interest of protecting the health, safety, welfare, and morals of citizens.

However, zoning regulations can serve to limit private property rights by prohibiting landowners from using their land in the way they see fit or in the way that maximizes land value. For example, a landowner who purchased a 20-acre property in an area with no zoning restrictions would in theory be allowed to subdivide his property into 40 half-acre parcels for housing development. But if the area is subsequently zoned for rural residential development with a minimum lot size of five acres, then the landowner's right to subdivide would effectively be restricted to the extent that he would only be allowed to subdivide into four five-acre parcels (one-tenth of the original number of parcels allowed in lieu of zoning), significantly limiting the economic potential of the property. In some cases, communities have established minimum lot sizes sufficiently large that certain types of development, including residential, are effectively eliminated as a financially viable alternative. In addition, since the intent of minimum-lot size regulations is usually to slow growth and preserve open space, the imposition of the regulation effectively represents a wealth transfer from the property owner, whose development rights have been curtailed, to the community-at-large, who collectively reap the benefits of preserved open space. In other words, the regulation forces the private landowner to pay (via the "lost" development potential) for the benefit received by the public.

Historically, the payment of compensation to landowners whose property values have been reduced through regulation, including zoning, is rare and has generally been associated with the total, or near-total, taking of private property. The courts have largely upheld the government exercise of the police power via zoning as non-compensable regulatory activity, so long as the owner retains some reasonable economic use of his property.

Yet, the concept of the "police power" has gradually expanded over time to cover all manner of state or local government action. As a result, the courts are predisposed to viewing any action ostensibly undertaken for a "public use" or "public purpose" as a valid exercise of the police power.¹⁸ For example, the U.S. Supreme Court has consistently upheld the state and local government power to restrict a wide variety of uses and activities not considered nuisances under common law, such as siting adult theaters in certain locations, building houses on lots smaller than one to five acres, permitting three or more unrelated tenants to share a single home, mining gravel, and constructing tall buildings.¹⁹

With the expansion of the activities deemed legitimate exercises of the "police power" has come a widening of the scope of zoning regulation. New York City—which passed the country's first citywide zoning ordinance in 1916—offers an illustrative example. The City's original ordinance contained three zoning districts (residential, commercial, and unrestricted); five height districts;

and three classes of area.²⁰ The current zoning ordinance would likely be unrecognizable to drafters of the original ordinance, as it has expanded to include dozens of zoning districts and a numerous other land use controls—such as minimum lot widths, minimum lot areas, floor-area ratios, minimum side-yard widths, minimum driveway length, maximum building height, and minimum parking requirements. The New York City example is hardly atypical; many local zoning ordinances have seen extensive modification and expansion over the years.

Noted constitutional scholar and property rights expert Bernard Seigan explained the expanding nature of zoning in this way:

[Z]oning has been the story of unrealized expectations. To date, we have had six or seven different zoning systems or strategies in this country. Each has been introduced with what has turned out to be greatly inflated rhetoric as to what it would accomplish. ... Each zoning system, in turn, has for the most part failed to meet the expectations created by that rhetoric. The result, every time, is a new effort at the drawing boards, producing more and increasingly severe rules and regulations that, experience suggests, are not likely to be more successful than the previous ones.²¹

Along with the increased scope of zoning regulation has come a wide array of other types of land use controls. For example, comprehensive planning—the legislative adoption of policy statements that aim to coordinate future development according to a set of goals regarding such matters as land use, transportation, housing, utilities, conservation, and community facilities—has become ubiquitous in urban policy and often uses zoning regulations as a primary implementation mechanism. Further, mandatory local comprehensive planning and zoning has become an integral component of state planning enabling statute reforms and is heavily promoted in the “smart growth” movement. For example, Oregon is widely recognized among urban planners and growth management advocates as the national model for statewide land use planning and development control. State law requires all city and county governments to develop comprehensive plans that protect farms, forests, and other resources and that provide for community needs such as housing, recreation, and economic development. (See Appendix A for further discussion of Oregon’s system of land use regulation.)²²

In conjunction with zoning, subdivision regulations are another means by which local governments have stepped in to place greater controls over private land development. While the primary focus of zoning is to control the use of land and the density of development, governments use local subdivision regulations to control the division of land tracts into building lots and the provision of infrastructure by specifying requirements for road widths, sidewalks, landscaping, buffers, grade of infrastructure, bulk and height restrictions, lot and yard widths, floor-area-ratios and other aspects of development.

In addition, the development approval procedures adopted by local governments often require that designated government bodies (such as municipal planning departments and planning commissions) review and approve proposed subdivision plats before a property owner is given permission to divide and sell his land. The proliferation of local development regulations and