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CS FOR HOUSE BILL NO. 118(ENE)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON ENERGY

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

~~Introduced: 2/18/15~~

Referred: House Special Committee on Energy, Community and Regional Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act adopting the Municipal Property Assessed Clean Energy Act; authorizing
2 municipalities to establish programs to impose assessments for energy improvements in
3 regions designated by municipalities; imposing fees; and providing for an effective
4 date."

5 || BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

***Section 1.** AS 29.10.200 is amended by adding a new paragraph to read:

(65) AS 29.49 (energy improvement assessment programs).

8 * **Sec. 2.** AS 29 is amended by adding a new chapter to read:

Chapter 49. Municipal Property Assessed Clean Energy Act.

Sec. 29.49.010. Exercise of powers. A municipality that establishes a program

in accordance with the requirements provided by under AS 29.49.060 may exercise

1 powers granted under this chapter.

2 **Sec. 29.49.020. Authorized assessments.** (a) An~~A~~ municipality may impose
3 an assessment under this chapter~~may be imposed~~ to repay the financing of qualified
4 projects on real property located in a region designated under this chapter.

5 (b) An assessment under this chapter may not be imposed to repay the
6 financing of

7 (1) facilities for undeveloped lots or lots undergoing development at
8 the time of the assessment; or

9 (2) the purchase or installation of products or devices not permanently
10 fixed to real property.

11 **Sec. 29.49.030. Written contract for assessment required.** A municipality
12 may impose an assessment under this chapter only under a written contract with the
13 record owner of the real property ~~to be~~ assessed.

14 **Sec. 29.49.040. Establishment of program.** (a) The governing body of a
15 municipality may ~~determine that it is convenient and advantageous to~~ establish a
16 program under this chapter.

17 (b) The~~A~~ municipality that establishes a program under this chapter may enter
18 into a written contract with a record owner of real property in a region designated
19 under this chapter to impose an assessment to repay the financing ~~by an owner~~ of a
20 qualified project on property of the owner. The financing ~~to be~~ repaid through
21 assessments may be provided by a third party or, if authorized by ~~the~~
22 ~~program~~municipal ordinance, by the municipality.

23 (c) If ~~the~~a program provides for third-party financing, ~~the~~when a municipality
24 ~~that~~ enters into a ~~written~~ contract ~~with a property owner~~ under (b) of this section~~must~~
25 ~~also, the municipality shall~~ enter into a written contract with the third party ~~that~~
26 ~~provides financing for a qualified project under the program~~ providing for the
27 municipality to service the debt through assessments.

28 (d) If ~~the~~a program provides for ~~municipality~~municipal financing, the
29 municipality shall enter into a written contract ~~described by (b) with the record owner~~
30 of ~~this section must be a contract~~the real property to finance the qualified project
31 through assessments.

(e) The financing for which assessments are imposed may ~~include~~be for costs of the project, including

(1) the cost of materials and labor necessary for installation or modification of a qualified improvement;

(2) permit fees;

(3) inspection fees;

(4) lender's fees;

(5) program application and administrative fees;

(6) project development and engineering fees;

(7) third-party review fees, including verification review fees, under

AS 29.49.090; and

(8) any other fees or costs that may be incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the municipality.

Sec. 29.49.050. Designation of region. (a) The governing body of a municipality may ~~determine that it is convenient and advantageous to~~ designate an area of the municipality as a region ~~within which the municipality and where a record~~ ~~owners~~owner of real property in the region may enter into a written ~~contracts~~contract to impose ~~assessments~~an assessment to repay the financing of a qualified ~~projects~~project by ~~owners~~the owner on ~~their~~the owner's property and, if authorized by the ~~municipality~~municipal program, finance the qualified project.

(b) An area designated as a region by the governing body of a municipality under this section

(1) may include the entire municipality; and

(2) must be located wholly within the municipality's jurisdiction.

(c) For purposes of determining a municipality's jurisdiction under (b)(2) of this section, the municipality's extraterritorial jurisdiction may be included.

(d) A municipality may designate more than one region. If multiple regions are designated, the regions may be separate, overlapping, or coterminous.

Sec. 29.49.060. Procedure for establishment of program. (a) To establish a program under this chapter, the governing body of a municipality ~~must~~shall take the

1 following actions in the following order:

2 (1) adopt a resolution of intent that includes-a

3 (A) a finding that, ~~if appropriate~~, financing qualified projects
4 through contractual assessments ~~is~~serves a valid public purpose;

5 (B) a statement that the municipality intends to allow property
6 owners to make contractual assessments to repay financing for qualified
7 projects~~available to property owners~~;

8 (C) a description of ~~the types of~~ qualified projects that may be
9 subject to contractual assessments;

10 (D) a description of the boundaries of the region;

11 (E) a description of any proposed arrangements ~~for to make~~
12 third-party financing ~~to be~~ available or any financing the municipality
13 ~~financing to be provided~~will provide for qualified projects;

14 (F) a description of ~~municipality~~municipal debt servicing
15 procedures ~~if for any~~ third-party financing ~~will be provided~~ and assessments
16 ~~will be collected to service a third party debt~~;

17 (G) ~~reference to~~a notice of the report on the proposed program
18 ~~as provided by~~required under AS 29.49.070, and ~~a statement identifying~~ the
19 location where the report is available for public inspection;

20 (H) ~~statement of~~ the time and place for a public hearing on the
21 proposed program; and

22 (I) ~~a statement identifying~~ the ~~appropriate~~names of the local
23 official who administers the program and the appropriate assessor~~collector for~~
24 ~~purposes of consulting regarding collecting or person who collects~~ the
25 proposed contractual assessments with property taxes imposed on the assessed
26 property;

27 (2) hold a public hearing at which the public may comment on the
28 proposed program, ~~including and~~ the report ~~required by~~prepared under AS 29.49.070;
29 and

30 (3) adopt ~~a resolution~~an ordinance establishing the program and the
31 terms of the program, including

(A) each item included in the report required under AS 29.49.070, which may be incorporated by reference; and

(B) a description of each aspect of the program that may not be amended ~~only after~~unless another public hearing is held.

(b) For purposes of (a)(3)(A) of this section, the resolution may incorporate the report or the amended version of the report, as appropriate, by reference.

(e) Subject to the terms of the resolution establishing the program as referenced by (a)(3)(B) of this section, the governing body of a municipality may amend a program by resolution.

~~(d)~~(b) A municipality may

(1) hire and set the compensation of a program administrator and program staff; or

(2) contract for professional services necessary to administer a program.

(e) A municipality may impose fees to offset the costs of administering a program. The fees authorized ~~by~~under this subsection may be assessed as a

(1) program application fee paid by the property owner requesting applying to ~~participate in~~ the program;

(2) component of the interest rate on the assessment in the written contract between the municipality and the property owner; or

(3) combination of (1) and (2) of this subsection.

Sec. 29.49.070. Report regarding assessment program. (a) The report for a proposed program required by AS 29.49.060 must include

(1) a map showing the boundaries of the proposed region;

(2) a form for a contract between the municipality and the property owner specifying the terms of

(A) assessment under the program; and

(B) financing provided by a third party or the municipality, as appropriate;

(3) if the proposed program provides for third-party financing, a form for a contract between the ~~municipalities~~ municipality and the third party regarding the

1 servicing of the debt through assessments;

2 (4) a description of ~~types of qualified~~ projects that may ~~be subject~~
3 ~~to qualify for~~ contractual assessments;

4 (5) a plan for ensuring sufficient capital for third-party financing and,
5 if appropriate, raising capital for ~~municipality~~municipal financing for qualified
6 projects;

7 (6) if bonds will be issued to provide capital to finance qualified
8 projects as part of the program as provided by AS 29.49.140, ~~a~~

9 (A) a maximum aggregate annual dollar amount for municipal
10 financing ~~through~~repaid by contractual assessments ~~to be provided by the~~
11 ~~municipality~~ under the program;

12 (B) ~~method~~ (B) if requests appear likely to exceed the
13 authorization amount, a priority order for ranking ~~requests from~~a property
14 ~~owners~~owner's application for financing ~~through~~repaid by contractual
15 assessments ~~in priority order if requests appear likely to exceed the~~
16 ~~authorization amount~~; and

17 (C) ~~method~~a formula for determiningcalculating

18 (i) the interest rate and period during which contracting
19 owners would pay an assessment; and

20 (ii) the maximum amount of an assessment;

21 (7) a method for ensuring that the period of the contractual assessment
22 does not exceed the useful life of the qualified project that is the basis for the
23 assessment;

24 (8) a description of the application process and eligibility requirements
25 for financing of qualified projects ~~to be~~ repaid ~~through~~by contractual assessments
26 under the program;

27 (9) a method ~~as prescribed by~~under (b) of this section for ~~ensuring~~
28 ~~that~~a property ~~owners requesting~~owner applying to participate in the program to
29 demonstrate the ~~financial~~property owner's ability to fulfill financial obligations ~~to be~~
30 repaid ~~through~~by contractual assessments;

31 (10) a statement explaining the manner in which property will be

assessed and assessments will be collected;

(11) a statement explaining the lender notice requirement ~~provided by~~
under AS 29.49.080;

(12) a statement explaining the review requirement ~~provided by~~
under AS 29.49.090;

(13) a description of marketing and participant education services to be provided for the program;

(14) a description of quality assurance and antifraud measures to be instituted for the program; and

(15) the procedures for collecting the proposed contractual assessments.

(b) The municipality shall establish a method ~~for ensuring a demonstration~~
~~of~~by which a property owner shall demonstrate financial ability ~~under (a)(9) of this~~
~~section must be~~ based on appropriate underwriting factors, including

(1) ~~providing for~~ verification that

(A) the property owner ~~requesting~~applying to participate ~~under~~in the program is

(iA) the legal owner of the benefited property;

(iiB) current on mortgage and property tax payments; and

(iiiC) not insolvent or in bankruptcy proceedings; and

(2) ~~requiring~~ an appropriate ratio ~~of~~between the amount of the assessment ~~to~~and the assessed value of the property.

(c) The municipality shall make the report available for public inspection

(1) on the Internet website of the municipality; and

(2) at the primary governing offices of the municipality.

Sec. 29.49.080. Notice to mortgage holder required for participation.

Before a municipality may enter into a written contract with a record owner of real property to impose an assessment to repay the financing of a qualified project under this chapter, the property owner shall

(1) give the holder of any a mortgage lien on the property ~~must be~~
~~given~~at least 30 days' written notice of the intention of the property owner to

1 participate in a program under this chapter ~~not later than 30 days~~ before the ~~date the~~
2 written contract for assessment between the owner and the municipality is executed;
3 and

4 (2) obtain a written consent from the holder of ~~the~~a mortgage lien on
5 the property ~~must be obtained~~.

6 **Sec. 29.49.090. Review required.** (a) A program established under this
7 chapter must require ~~for each proposed qualified project~~ a review of the energy
8 baseline conditions for each proposed qualified project and the projected energy
9 savings to establish the projected energy savings.

10 (b) After a qualified project is completed, the municipality shall obtain
11 verification that the qualified project was properly completed and is operating as
12 intended.

13 (c) An independent third party must conduct both a baseline energy review
14 and a verification review under this section.

15 **Sec. 29.49.100. Direct acquisition by owner.** The proposed arrangements for
16 financing a qualified project may authorize the property owner to

17 (1) purchase directly the related equipment and materials for the
18 installation or modification of a qualified improvement; and

19 (2) contract directly, including through lease, power purchase
20 agreement, or other service contract, for the installation or modification of a qualified
21 improvement.

22 **Sec. 29.49.110. Recording of notice of contractual assessment required.** (a)
23 A municipality that authorizes financing through contractual assessments under this
24 chapter shall file written notice of each contractual assessment in the real property
25 records of the recording district in which the property is located.

26 (b) The notice under (a) of this section must contain
27 (1) the amount of the assessment;
28 (2) the legal description of the property;
29 (3) the name of each property owner; and
30 (4) a reference to the statutory assessment lien provided under this
31 chapter.

Sec. 29.49.120. Lien. (a) Contractual assessments under this chapter and any interest or penalties on the assessments are liens on the property assessed and are prior and paramount to all liens except municipal tax liens and special assessments. Contractual assessment liens may be enforced as provided in AS 29.45.320 - 29.45.470 for enforcement of property tax liens.

(b) Contractual assessment liens run with the land, and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien.

(c) Penalties and interest may be added to delinquent installments of the assessments in the same manner as provided in AS 29.45.250.

(d) A municipality may recover costs and expenses, including attorney fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

Sec. 29.49.130. Collection of assessments. The governing body of a municipality may contract with the governing body of another taxing unit to perform the duties of the municipality relating to collection of assessments imposed by the municipality under this chapter.

Sec. 29.49.140. Bonds or notes. (a) A municipality may issue bonds or notes to finance qualified projects through contractual assessment under this chapter.

(b) Bonds or notes issued under this section may not be general obligations of the municipality. The bonds or notes must be secured by one or more of the following, as provided by the governing body of the municipality in the resolution or ordinance approving the bonds or notes:

(1) payments of contractual assessments on benefited property in one or more specified regions designated under this chapter;

(2) reserves established by the municipality from grants, bonds, or net proceeds or other lawfully available funds;

(3) municipal bond insurance, lines of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, or any other available means of providing credit support or liquidity; and

(4) any other funds lawfully available for purposes consistent with this

1 chapter.

2 (c) A ~~municipality~~municipal pledge of assessments, funds, or contractual
3 rights in connection with the issuance of bonds or notes by the municipality under this
4 chapter is a first lien on the assessments, funds, or contractual rights pledged in favor
5 of the person to whom the pledge is given, without further action by the municipality.
6 The lien is valid and binding against any other person, with or without notice.

7 (d) Bonds or notes issued under this chapter further an essential public and
8 governmental purpose, including

- 9 (1) improvement of the reliability of local electrical systems;
- 10 (2) reduction of energy costs;
- 11 (3) reduction of energy demand on local utilities;
- 12 (4) economic stimulation and development;
- 13 (5) enhancement of property values; and
- 14 (6) enhancement of employment opportunities.

15 **Sec. 29.49.150. Joint implementation.** (a) Any combination of municipalities
16 may agree to jointly implement or administer a program under this chapter.

17 (b) If two or more municipalities jointly implement a program~~jointly~~, a single
18 public hearing held jointly by the cooperating municipalities is sufficient to satisfy the
19 requirement of AS 29.49.060(a)(2).

20 (c) One or more municipalities may contract with a third party, including
21 another municipality, to administer a program.

22 **Sec. 29.49.160. Prohibited acts.** A municipality that establishes a region under
23 this chapter may not

24 (1) make the issuance of a permit, license, or other authorization from
25 the municipality to a person who owns property in the region contingent on the person
26 entering into a written contract to repay the financing of a qualified project through
27 contractual assessments under this chapter; or

28 (2) otherwise compel a person who owns property in the region to
29 enter into a written contract to repay the financing of a qualified project through
30 contractual assessments under this chapter.

31 **Sec. 29.49.890. Application of chapter.** This chapter applies to home rule and

1 general law municipalities.

2 **Sec. 29.49.900. Definitions.** In this chapter,

3 (1) "program" means a program established under this chapter;

4 (2) "qualified improvement" means a permanent improvement fixed to
5 real property and intended to decrease energy consumption or demand, including a
6 product, device, or interacting group of products or devices ~~on the customer's side of~~
7 ~~the meter~~ that uses energy technology to generate electricity, provide thermal energy,
8 or regulate temperature;

9 (3) "qualified project" means the installation or modification of a
10 qualified improvement;

11 (4) "real property" means privately owned commercial or industrial
12 real property;

13 (5) "region" means a region designated under this chapter.

14 **Sec. 29.49.995. Short title.** This chapter may be cited as the Municipal
15 Property Assessed Clean Energy Act.

16 * **Sec. 23.** This Act takes effect immediately under AS 01.10.070(c).