

LEGAL SERVICES

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MEMORANDUM

March 21, 2015

SUBJECT: Edits to conform to the *Manual of Legislative Drafting* and style used in the Alaska Statutes (CSHB 118(ENE); Work Order No. 29-GH1021\W)

TO: Representative Liz Vazquez
Attn: Joshua Walton

FROM: Susie L. Shutts
Legislative Counsel

Enclosed is the House Energy Committee Substitute for HB 118 that you requested.

Edits to conform to the *Manual of Legislative Drafting* and the Alaska Statutes

This version has been edited to conform to the *Manual of Legislative Drafting* and to the style used in the Alaska Statutes.

As a general rule, the Alaska Statutes use the active rather than the passive voice and identify the actor who has a duty.¹ There are several instances where this bill benefits from replacing the passive voice with an active construction. For example, page 6, lines 21 - 22 currently reads "The method for ensuring a demonstration of financial ability under (a)(9) of this section must be based on appropriate underwriting factors." This version changes that phrase so that the municipality is identified as the actor: "The municipality shall establish a method by which a property owner shall demonstrate financial ability based on appropriate underwriting factors."

There are other instances where edits in this CS aim to clarify ambiguities in the bill, including the deletion of unnecessary language. For example, on page 4, line 13, the "collector for purposes of collecting the proposed contractual assessments" now reads "person who collects the proposed contractual assessments." In addition, terms have been edited to be more consistent and concise. For example, a property owner is now described as "applying to the program" throughout the bill instead of, as on page 4, line 30, "requesting to participate in the program."

In other instances, this CS eliminates repetition and alters syntax to prevent confusion.

¹ See the *Manual of Legislative Drafting* (2015), p. 66 ("As a general rule, use the active rather than the passive voice. This is especially important where it would otherwise be unclear just who is to do what the statute seeks to have done.").

Public hearing provision

On page 4, lines 21 - 22, under AS 29.49.060(a)(3)(B), a municipality must adopt an ordinance that establishes the program and its terms, including "a description of each aspect of the program that may be amended only after another public hearing is held."

This requirement seems unnecessary since under AS 29.25.020, the general procedure for adopting an ordinance, except for an emergency ordinance, requires that the ordinance "be set by the governing body for a public hearing by the affirmative vote of a majority of the votes authorized on the question,"² "at least five days before the public hearing a summary of the ordinance shall be published together with a notice of the time and place for the hearing,"³ "copies of the ordinance shall be available to all persons present at the hearing, or the ordinance shall be read in full,"⁴ and "during the hearing the governing body shall hear all interested persons wishing to be heard."⁵ AS 29.25.020 only applies to general law municipalities. AS 29.20.020, which applies to home rule and general law municipalities, requires that meetings be public as provided in AS 44.62.310 and that the governing body "provide reasonable opportunity for the public to be heard at regular and special meetings."

General law municipalities

AS 29.49.890 of this bill states that AS 29.49 applies to home rule and general law municipalities. And AS 29.49.010 states that "[a] municipality that establishes a program under AS 29.49.060 may exercise powers granted under this chapter." Despite these provisions, it is unclear whether all general law municipalities would be authorized to establish programs under AS 29.49 by mere passage of CSHB 118(ENE) or whether a municipality would still need to acquire the powers otherwise authorized under AS 29.49. It is also unclear whether the powers granted by AS 29.49 could be exercised by all general law boroughs on an areawide basis.

If the intent of this bill is to authorize all boroughs to establish programs under this chapter, then it might be better to amend AS 29.35.200, AS 29.35.210, and AS 29.35.220 and specifically provide that these general law boroughs may provide for energy improvement assessment programs on an areawide basis.⁶

² AS 29.25.020(b)(2).

³ AS 29.25.020(b)(3).

⁴ AS 29.25.020(b)(4).

⁵ AS 29.25.020(b)(5).

⁶ A third class borough's powers are particularly limited. Under AS 29.35.220(b), a third class borough may not exercise a power on an areawide basis other than education and tax assessment and collection.

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Extraterritorial jurisdiction

AS 29.35.020(a) permits a municipality that is otherwise authorized by law to provide a facility or service outside its boundaries to regulate their use and regulation to the extent that the jurisdiction where the facilities or services are located does not regulate them. However, the powers in AS 29.49 are not included in AS 29.35.020(a). For this reason, the meaning of AS 29.49.050(c), which permits a municipality to exercise "extraterritorial jurisdiction," is unclear.

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Enclosure