

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: 3/25/15

Referred: Community and Regional Affairs, Finance

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

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:**

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

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

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

9 **Chapter 49. Municipal Property Assessed Clean Energy Act.**

10 **Sec. 29.49.010. Exercise of powers.** A municipality that establishes a program
11 under AS 29.49.060 may exercise powers granted under this chapter.

12 **Sec. 29.49.020. Authorized assessments.** (a) A municipality may impose an
13 assessment under this chapter to repay the financing of qualified projects on real
14 property located in a region designated under this chapter.

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

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

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

7 **Sec. 29.49.030. Written contract for assessment required.** A municipality
8 may impose an assessment under this chapter only under a written contract with the
9 record owner of the real property assessed.

10 **Sec. 29.49.040. Establishment of program.** (a) The governing body of a
11 municipality may establish a program under this chapter.

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

17 (c) If a program provides for third-party financing, when a municipality enters
18 into a contract under (b) of this section, the municipality shall enter into a written
19 contract with the third party providing for the municipality to service the debt through
20 assessments.

21 (d) If a program provides for municipal financing, the municipality shall enter
22 into a written contract with the record owner of the real property to finance the
23 qualified project through assessments.

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

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

28 (2) permit fees;

29 (3) inspection fees;

30 (4) lender's fees;

31 (5) program application and administrative fees;

- 1 (6) project development and engineering fees;
- 2 (7) third-party review fees, including verification review fees, under
- 3 AS 29.49.090; and
- 4 (8) any other fees or costs that may be incurred by the property owner
- 5 incident to the installation, modification, or improvement on a specific or pro rata
- 6 basis, as determined by the municipality.

7 **Sec. 29.49.050. Designation of region.** (a) The governing body of a

8 municipality may designate an area of the municipality as a region where a record

9 owner of real property in the region may enter into a written contract to impose an

10 assessment to repay the financing of a qualified project by the owner on the owner's

11 property and, if authorized by the municipal program, finance the qualified project.

12 (b) An area designated as a region by the governing body of a municipality

13 under this section

14 (1) may include the entire municipality; and

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

16 (c) For purposes of determining a municipality's jurisdiction under (b)(2) of

17 this section, the municipality's extraterritorial jurisdiction may be included.

18 (d) A municipality may designate more than one region. If multiple regions

19 are designated, the regions may be separate, overlapping, or coterminous.

20 **Sec. 29.49.060. Procedure for establishment of program.** (a) To establish a

21 program under this chapter, the governing body of a municipality shall take the

22 following actions in the following order:

23 (1) adopt a resolution of intent that includes

24 (A) a finding that financing qualified projects through

25 contractual assessments serves a valid public purpose;

26 (B) a statement that the municipality intends to allow property

27 owners to make contractual assessments to repay financing for qualified

28 projects;

29 (C) a description of qualified projects that may be subject to

30 contractual assessments;

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

1 (E) a description of any proposed arrangements to make third-
 2 party financing available or any financing the municipality will provide for
 3 qualified projects;

4 (F) a description of municipal debt servicing procedures for
 5 any third-party financing and assessments;

6 (G) a notice of the report on the proposed program required
 7 under AS 29.49.070 and the location where the report is available for public
 8 inspection;

9 (H) the time and place for a public hearing on the proposed
 10 program; and

11 (I) the names of the local official who administers the program
 12 and the appropriate assessor or person who collects the proposed contractual
 13 assessments with property taxes imposed on the assessed property;

14 (2) hold a public hearing at which the public may comment on the
 15 proposed program and the report prepared under AS 29.49.070; and

16 (3) adopt an ordinance establishing the program and the terms of the
 17 program, including

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

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

22 (b) A municipality may

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

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

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

29 (1) program application fee paid by the property owner applying to the
 30 program;

31 (2) component of the interest rate on the assessment in the written

1 contract between the municipality and the property owner; or

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

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

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

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

8 (A) assessment under the program; and

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

11 (3) if the proposed program provides for third-party financing, a form
12 for a contract between the municipality and the third party regarding the servicing of
13 the debt through assessments;

14 (4) a description of projects that may qualify for contractual
15 assessments;

16 (5) a plan for ensuring sufficient capital for third-party financing and,
17 if appropriate, raising capital for municipal financing for qualified projects;

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

20 (A) a maximum aggregate annual dollar amount for municipal
21 financing repaid by contractual assessments under the program;

22 (B) if requests appear likely to exceed the authorization
23 amount, a priority order for ranking a property owner's application for
24 financing repaid by contractual assessments; and

25 (C) a formula for calculating

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

28 (ii) the maximum amount of an assessment;

29 (7) a method for ensuring that the period of the contractual assessment
30 does not exceed the useful life of the qualified project that is the basis for the
31 assessment;

(8) a description of the application process and eligibility requirements for financing of qualified projects repaid by contractual assessments under the program;

(9) a method under (b) of this section for a property owner applying to participate in the program to demonstrate the property owner's ability to fulfill financial obligations repaid by contractual assessments;

(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 under AS 29.49.080;

(12) a statement explaining the review requirement 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 by which a property owner shall demonstrate financial ability based on appropriate underwriting factors, including

(1) verification that the property owner applying to participate in the program is

(A) the legal owner of the benefited property;

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

(C) not insolvent or in bankruptcy proceedings; and

(2) an appropriate ratio between the amount of the assessment 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.

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

4 (1) give the holder of a mortgage lien on the property at least 30 days'
 5 written notice of the intention of the property owner to participate in a program under
 6 this chapter before the written contract for assessment between the owner and the
 7 municipality is executed; and

8 (2) obtain a written consent from the holder of a mortgage lien on the
 9 property.

10 **Sec. 29.49.090. Review required.** (a) A program established under this
 11 chapter must require a review of the energy baseline conditions for each proposed
 12 qualified project and the projected energy savings to establish the projected energy
 13 savings.

14 (b) After a qualified project is completed, the municipality shall obtain
 15 verification that the qualified project was properly completed and is operating as
 16 intended.

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

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

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

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

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

30 (b) The notice under (a) of this section must contain

31 (1) the amount of the assessment;

- 1 (2) the legal description of the property;
- 2 (3) the name of each property owner; and
- 3 (4) a reference to the statutory assessment lien provided under this
- 4 chapter.

5 **Sec. 29.49.120. Lien.** (a) Contractual assessments under this chapter and any
 6 interest or penalties on the assessments are liens on the property assessed and are prior
 7 and paramount to all liens except municipal tax liens and special assessments.
 8 Contractual assessment liens may be enforced as provided in AS 29.45.320 -
 9 29.45.470 for enforcement of property tax liens.

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

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

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

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

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

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

- 28 (1) payments of contractual assessments on benefited property in one
- 29 or more specified regions designated under this chapter;
- 30 (2) reserves established by the municipality from grants, bonds, or net
- 31 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 chapter.

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

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

(1) improvement of the reliability of local electrical systems;

(2) reduction of energy costs;

(3) reduction of energy demand on local utilities;

(4) economic stimulation and development;

(5) enhancement of property values; and

(6) enhancement of employment opportunities.

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

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

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

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

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

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

Sec. 29.49.890. Application of chapter. This chapter applies to home rule and general law municipalities.

Sec. 29.49.900. Definitions. In this chapter,

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

(2) "qualified improvement" means a permanent improvement fixed to real property and intended to decrease energy consumption or demand, including a product, device, or interacting group of products or devices that uses energy technology to generate electricity, provide thermal energy, or regulate temperature;

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

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

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

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

* **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).