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Shutts
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SENATE CS FOR CS FOR HOUSE BILL NO. 80(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES WOOL, Grenn, Spohnholz, Kawasaki, Fansler, Tarr, Guttenberg, Josephson, Parish, Seaton, Drummond, Gara, Kito, Tuck

A BILL

FOR AN ACT ENTITLED

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

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:

(66) AS 29.55.100 - 29.55.165 (energy improvement assessment programs).

*** Sec. 2.** AS 29.35.200(b) is amended to read:

(b) A first class borough may by ordinance exercise the following powers on an areawide basis:

- (1) provide transportation systems;
- (2) provide water pollution control;
- (3) provide air pollution control in accordance with AS 46.14.400;

(4) license day care facilities;

(5) license, impound, and dispose of animals;

(6) establish an energy improvement assessment program under AS 29.55.100 - 29.55.165.

* **Sec. 3.** AS 29.35.210(a) is amended to read:

(a) A second class borough may by ordinance exercise the following powers on a nonareawide basis:

(1) provide transportation systems;

(2) regulate the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(3) license, impound, and dispose of animals;

(4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste collection and disposal;

(5) provide air pollution control under AS 46.14.400;

(6) provide water pollution control;

(7) participate in federal or state loan programs for housing rehabilitation and improvement for energy conservation;

(8) provide for economic development;

(9) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 - 19.30.251;

(10) establish an emergency services communications center under AS 29.35.130;

(11) subject to AS 28.01.010, regulate the licensing and operation of motor vehicles and operators;

(12) engage in activities authorized under AS 29.47.460;

(13) contain, clean up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210;

(14) establish an energy improvement assessment program under

AS 29.55.100 - 29.55.165.

* **Sec. 4.** AS 29.35.210(b) is amended to read:

(b) A second class borough may by ordinance exercise the following powers on an areawide basis:

- (1) provide transportation systems;
- (2) license, impound, and dispose of animals;
- (3) provide air pollution control under AS 46.14.400;
- (4) provide water pollution control;
- (5) license day care facilities;

(6) establish an energy improvement assessment program under AS 29.55.100 - 29.55.165.

* **Sec. 5.** AS 29.55 is amended by adding new sections to read:

Article 2. Municipal Property Assessed Clean Energy Act.

Sec. 29.55.100. Establishment of program. (a) A municipality may establish an energy improvement assessment program under AS 29.55.100 - 29.55.165 to finance the installation or modification of permanent improvements that are

(1) fixed to existing privately owned commercial or industrial property; and

(2) intended to reduce energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature.

(b) To establish a program under AS 29.55.100 - 29.55.165, the governing body of a municipality shall take the following actions in the following order:

(1) adopt a resolution of intent that includes

(A) a finding that financing energy improvement projects through assessments serves a valid public purpose;

(B) a statement that the municipality intends to allow privately owned commercial or industrial property owners to make assessments to repay financing for energy improvement projects;

(C) a description of energy improvement projects that may be

subject to assessments;

(D) a description of the boundaries of a region within the municipality's boundaries in which the program is available;

(E) a description of any proposed arrangements to make third-party financing available or any financing the municipality will provide for energy improvement projects; and

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

(2) prepare the report required under AS 29.55.110 and provide notice of the report with the

(A) location where the report is available for public inspection;

(B) time and place for a public hearing on the proposed program; and

(C) name of the local official who administers the program and the appropriate assessor or person who collects the proposed assessments with property taxes imposed on the assessed property;

(3) hold a public hearing at which the public may comment on the proposed program and the report prepared under AS 29.55.110; and

(4) adopt an ordinance establishing the program and the terms of the program, including each item included in the report required under AS 29.55.110, which may be incorporated by reference.

(c) 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.

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

(1) program application fee paid by the property owner applying to 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. 29.55.105. Assessment. (a) A municipality that establishes a program under AS 29.55.100 may

(1) enter into a written contract with a record owner of privately owned commercial or industrial property in a region designated under AS 29.55.100 to impose an assessment to repay the financing of an energy improvement project on that property;

(2) 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 section.

(b) Financing repaid by an assessment may be provided by

(1) a third party under a written contract with the municipality that authorizes the municipality to service the debt by assessment; or

(2) if authorized by municipal ordinance, the municipality.

(c) An assessment under this section may repay financing for costs of the energy improvement project, including

(1) the cost of materials and labor necessary for the energy improvement project;

(2) permit fees;

(3) inspection fees;

(4) lender's fees;

(5) program application and administrative fees;

(6) energy improvement project development and engineering fees;

(7) third-party review fees, including verification review fees, under AS 29.55.120; 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.

(d) An assessment under this section may not repay financing for the costs of

(1) facilities for undeveloped lots or lots undergoing development at

the time of the assessment;

(2) the purchase or installation of products or devices not permanently fixed to the privately owned commercial or industrial property; or

(3) a utility's purchase or installation of a product, service, or improvement, if the product, service, or improvement will be used by the utility to generate electricity, provide thermal energy, or otherwise furnish a service to the public for compensation; in this paragraph, "utility" and "service" have the meanings given in AS 42.05.990.

(e) A municipality may establish more than one region. The boundaries of each region may be separate, overlapping, or coterminous.

(f) A municipality may not impose a period of an assessment under this section on privately owned commercial or industrial property that exceeds 20 years or the useful life of the project that is the basis for the assessment, whichever is shorter.

(g) Except as otherwise provided in (h) of this section, the total financing repaid by assessments

(1) may not exceed 20 percent of the assessed value of the property at the time of program application;

(2) must be exceeded by the projected monetary savings to the property owner over the life of the assessment as a result of the energy improvement project.

(h) The property owner may apply for a waiver from the municipality to exceed a limitation under (g) of this section. A waiver application under this subsection must

(1) include a reasonable justification acknowledged in writing by the property owner and the party providing the financing to be repaid by the assessment; and

(2) for a waiver from the limitation in (g)(2) of this section, address the interests of potential tenants and future property owners.

Sec. 29.55.110. Report regarding assessment program. (a) The municipality shall prepare a report for a proposed program required by AS 29.55.100 that includes

(1) a map showing the boundaries of each proposed region within

1 which the program is available;

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

4 (A) assessment under the program; and

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

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

10 (4) a description of projects that may qualify for assessments;

11 (5) a plan for ensuring sufficient capital for third-party financing and,
12 if appropriate, raising capital for municipal financing for energy improvement
13 projects;

14 (6) if bonds will be issued to provide capital to finance energy
15 improvement projects as part of the program as provided by AS 29.55.140,

16 (A) a maximum aggregate annual dollar amount for municipal
17 financing repaid by assessments under the program;

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

21 (C) a formula for calculating

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

24 (ii) the maximum amount of an assessment;

25 (7) a method to calculate a period of assessment consistent with
26 AS 29.55.105(f);

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

29 (9) a method for a property owner applying to participate in the
30 program to demonstrate the property owner's ability to fulfill financial obligations and
31 pay assessments; the method must be based on appropriate underwriting factors,

including

(A) verification that the property owner

(i) is the legal owner of the benefited property;

(ii) is current on mortgage and property tax payments;

and

(iii) is not insolvent or in bankruptcy proceedings; and

(B) an appropriate ratio between the amount of the assessment

and the assessed value of the property;

(10) an explanation of the manner in which the municipality shall assess the property and collect assessments;

(11) the lender notice requirement under AS 29.55.115;

(12) the review requirement under AS 29.55.120;

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

(14) a description of quality assurance and antifraud measures instituted by the municipality for the program.

(b) 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. 29.55.115. Notice to mortgage holder required for participation.

Before a municipality may enter into a written contract with a record owner of property to impose an assessment to repay the financing of an energy improvement project under AS 29.55.100, the property owner shall

(1) give each holder of a mortgage lien on the property at least 30 days' written notice of the intention of the property owner to participate in a program under AS 29.55.100; and

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

Sec. 29.55.120. Review required. The record owner of property on which an assessment is imposed under AS 29.55.105 shall obtain from an independent, third-party qualified energy auditor the following:

(1) for each proposed energy improvement project,

(A) a review of the energy or emissions baseline conditions, as appropriate; and

(B) the projected reduction in energy costs, energy consumption or demand, or emissions affecting local air quality, as appropriate; and

(2) for each completed energy improvement project, verification that the energy improvement project was properly completed and is operating as intended.

Sec. 29.55.125. Direct acquisition by owner. The proposed arrangements for financing an energy improvement project may authorize the property owner to

(1) purchase directly the related equipment and materials for the energy improvement project; and

(2) contract directly, including through lease, a power purchase agreement, or other service contract, for the energy improvement project.

Sec. 29.55.130. Recording of notice of assessment. (a) A municipality that authorizes financing through assessments under AS 29.55.105 shall file written notice of each assessment in the property records of the recording district in which the property is located.

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

(1) the amount of the assessment;

(2) the legal description of the property;

(3) the name of each property owner; and

(4) a reference to the statutory assessment lien provided under AS 29.55.135.

Sec. 29.55.135. Lien. (a) Assessments under AS 29.55.105 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. Assessment liens may be enforced as provided in AS 29.45.320 - 29.45.470 for enforcement of property tax liens.

(b) 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. 29.55.140. Bonds or notes. (a) A municipality may issue bonds or notes to finance energy improvement projects subject to assessment under AS 29.55.105.

(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 assessments on benefited property in one or more specified regions designated under AS 29.55.100;

(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 AS 29.55.100 - 29.55.165.

(c) A municipal pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the municipality under this section 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 section must further one or more of the following essential public and governmental purposes:

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

(2) reduction of energy costs;

(3) reduction of energy demand on local utilities;

- (4) reduction of emissions affecting local air quality;
- (5) economic stimulation and development;
- (6) enhancement of property values;
- (7) enhancement of employment opportunities.

Sec. 29.55.145. Joint implementation. A municipality may enter into an agreement with

- (1) a third party to administer a program under AS 29.55.100;
- (2) one or more municipalities to jointly implement or administer a program under AS 29.55.100; 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 29.55.100(b)(3).

Sec. 29.55.150. Prohibited acts. A municipality that establishes a region under AS 29.55.100 may not 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 an energy improvement project through assessments under AS 29.55.105, or otherwise compel a person who owns property in the region to enter into a written contract to repay the financing of an energy improvement project through assessments under AS 29.55.105.

Sec. 29.55.155. Application. AS 29.55.100 - 29.55.165 apply to home rule and general law municipalities.

Sec. 29.55.160. Definitions. In AS 29.55.100 - 29.55.165,

- (1) "mortgage" has the meaning given in AS 13.06.050;
- (2) "program" means a program established under AS 29.55.100.

Sec. 29.55.165. Short title. AS 29.55.100 - 29.55.165 may be cited as the Municipal Property Assessed Clean Energy Act.

* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).