HOUSE BILL NO. 118

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE 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

"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 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 AS 29.49.060 may exercise powers granted under this chapter.

Sec. 29.49.020. Authorized assessments. (a) An assessment under this chapter may be imposed to repay the financing of qualified projects on real property located in a region designated under this chapter.

(b) An assessment under this chapter may not be imposed to repay the

financing of

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

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

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

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

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

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

(d) If the program provides for municipality financing, the written contract described by (b) of this section must be a contract to finance the qualified project through assessments.

(e) The financing for which assessments are imposed may include

(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 record owners of real property may enter into written contracts to impose assessments to repay the financing of qualified projects by owners on their property and, if authorized by the municipality 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 take the following actions in the following order:

(1) adopt a resolution of intent that includes a

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

(B) statement that the municipality intends to make contractual assessments to repay financing for qualified projects available to property owners;

(C) description of the types of qualified projects that may be

subject to contractual assessments;

(D) description of the boundaries of the region;

(E) description of any proposed arrangements for third-party financing to be available or any municipality financing to be provided for qualified projects;

(F) description of municipality debt servicing procedures if third-party financing will be provided and assessments will be collected to service a third-party debt;

(G) reference to the report on the proposed program as provided by AS 29.49.070, and a statement identifying the location where the report is available for public inspection;

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

(I) a statement identifying the appropriate local official and the appropriate assessor-collector for purposes of consulting regarding collecting the proposed contractual assessments with property taxes imposed on the assessed property;

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

(3) adopt a resolution establishing the program and the terms of the program, including

(A) each item included in the report under AS 29.49.070; and

(B) a description of each aspect of the program that may be amended only after 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.

(c) 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) 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 this subsection may be assessed as a

(1) program application fee paid by the property owner requesting 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. (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 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 contract between the municipalities and the third party regarding the servicing of the debt through assessments;

(4) a description of types of qualified projects that may be subject to contractual assessments;

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

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

(A) maximum aggregate annual dollar amount for financing through contractual assessments to be provided by the municipality under the program;

(B) method for ranking requests from property owners for

financing through contractual assessments in priority order if requests appear likely to exceed the authorization amount; and

(C) method for determining

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

(ii) the maximum amount of an assessment;

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

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

(9) a method as prescribed by (b) of this section for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations to be repaid through 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 provided by AS 29.49.080;

(12) a statement explaining the review requirement provided by 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 method for ensuring a demonstration of 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 to participate under the

program is

(i) the legal owner of the benefited property;

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

(iii) not insolvent or in bankruptcy proceedings; and

(2) requiring an appropriate ratio of the amount of the assessment to 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,

(1) the holder of any mortgage lien on the property must be given written notice of the intention of the owner to participate in a program under this chapter not later than 30 days before the date the written contract for assessment between the owner and the municipality is executed; and

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

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

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

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

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

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

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

Sec. 29.49.110. Recording of notice of contractual assessment required. (a) A municipality that authorizes financing through contractual assessments under this chapter shall file written notice of each contractual assessment in the real 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 this 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 chapter.

(c) A municipality 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 implement a program jointly, 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. 29.49.900. 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 on the customer's side of the meter 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. 2.** This Act takes effect immediately under AS 01.10.070(c).