



CS House Bill 118 Fin version P - Muni Energy Improvement Assessments/Bonds

DETAILED SECTIONAL ANALYSIS

Section 1: Amends existing AS 29.10.200 to add PACE financing to the list of items that Home Rule municipalities are allowed to engage in.

Section 2: Amends AS 29.35.200(b) to add PACE financing to the list of items that first class boroughs are allowed to engage in on an areawide basis.

Section 3: Amends AS 29.35.210(a) to add PACE financing to the list of items that second class boroughs are allowed to engage in on a non-areawide basis.

Section 4: Amends AS 29.35.210(b) to add PACE financing to the list of items that second class boroughs are allowed to engage in on an area wide basis.

Section 5: Amends AS 29 by adding a new chapter 48. Municipal Assessed Clean Energy Act and adds:

- Sec 29.29.010, Exercise of Powers, which allows municipalities to exercise powers under AS 29.40.060 (Judicial Review).
- Sec 29.49.020 Authorized Assessments, allowing for an assessment to be imposed to repay the financing of qualified projects on real property in the municipality or local government that adopts this program. Qualified projects do not include undeveloped lots or lots undergoing development at the time of assessment or the purchase of products or devices that are not a permanent part of the property.
- Sec. 29.49.030, Written Contract for Assessment Required, requires a written contract between the municipality and record owner of the real property before the PACE mechanism can be utilized.
- Sec. 29.49.040 Establishment of Program, authorizes municipalities to choose to establish a property assessed clean energy (PACE) program that would require a written contract with a record owner of real property. The financing for the PACE mechanism may be provided by a third party, or if authorized by the program, by a municipality. Repayment of third-party or municipal financing must be assured through a written contract with the property owner to finance the qualified project through a voluntary property tax assessment.

The financing may include project costs, materials, labor, permit fees, inspection fees, lender's fees, program application and administrative fees, project development and engineering fees, third-party review fees, including verification review fees under AS

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29.49.090 and any other fees that may be incurred by the property owner relating to the installation, modification, or improvement, as determined by the municipality.

- Sec. 29.49.050 Applicability of Program, allows municipalities to implement PACE on an area wide or non areawide basis if they choose to participate in the program. Designated areas within a municipality may include the entire municipality or more than one region, but each must be located wholly within the municipality's jurisdiction.
- Sec. 29.49.060 Procedure for Establishment of Program, defines the necessary actions for a municipality to establish a property assessed clean energy finance program. These are:
 - Adopt a resolution of intent that includes:
 - a finding that financing of qualified projects through contractual assessments is a valid public purpose;
 - a statement that the municipality intends to make contractual assessments to repay financing for qualified projects available to property owners;
 - a description of the types of qualified projects;
 - a description of the program boundaries;
 - a description of any proposed arrangements for third-party financing or municipal financing;
 - a description of the municipal debt servicing procedures if third-party financing is provided and assessments collected to service the third-party debt;
 - reference on the proposed program required by AS 29.49.010 and identifying where the report is available to the public;
 - identifying the time and place for a public hearing;
 - identifying the local official and assessor-collector for the proposed contractual assessments with property taxes imposed on the assessed property;
 - Hold a hearing where the public has the opportunity to provide comment, including on the report required in AS 29.49.070;
 - Adopt an ordinance establishing and defining the terms of the program, including:
 - each item included in the report under AS 29.49.070;
 - A municipality may hire a program administrator and program staff or contract for professional services to administer the program;
 - Fees may be assessed as an application fee, a component of the interest rate or a combination of both.
- Sec. 29.49.070 Report Regarding Assessment, defines the requirements of the municipality's publicly-available report on the program, as required by AS 29.49.060. The report must include:
 - A map showing the proposed program boundaries;

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- A form contract between the municipality and property owner that specifies the terms of the assessment and either the third-party or municipal financing;
- A form contract, if third-party financing is used, that must be included regarding the servicing of the debt through assessments;
- A description of projects that qualify and a plan for ensuring sufficient capital for third-party financing;
- If municipal revenue bond financing is proposed:
 - a plan for raising capital for municipal financing;
 - a maximum aggregate annual dollar amount for financing to be provided by the municipality;
 - the method for ranking requests from property owners if requests will likely exceed the available municipal funding, and the method for determining the interest rate and maximum amount of an assessment;
- A method for ensuring that the repayment schedule does not exceed the useful life of the qualified project;
- A description of the application process and eligibility requirements;
- A method to ensure that property owners have the capacity to participate and repay the financing obligations;
- A Statement describing the voluntary assessment and collection process;
- A statement describing the lender notice requirement of AS 29.49.080;
- A statement explaining the review requirement provided by AS 29.49.090;
- A description of marketing and educational services to be provided;
- A description of quality assurance and antifraud measures;
- Collection procedures;
- The method for ensuring the demonstration of financial ability must be based on appropriate underwriting factors, including verification that the property owner is the legal owner of the property, current on mortgage and property tax payments and is not insolvent or in bankruptcy proceedings. An appropriate ratio of the assessment to the assessed value of the property must be maintained;
- The municipality shall make the report publicly available online and at the primary governing office of the municipality.

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- Sec. 29.49.080, Notice to Mortgage Holder Required for Participation, sets a series of requirements for the municipality before it may enter into a written contract with a record owner of real property:
 - The holder of any mortgage lien on the property must be given written notice within 30 days before the contract is executed;
 - And a written consent from the mortgage lien holder must be obtained.
- Sec. 29.49.090, Review Required, requires a third-party review of baseline energy conditions in a proposed qualified project and the projected energy savings. After project completion the municipality must obtain a third-party verification that the project was properly completed and is operating as intended.
- Sec. 29.49.100, Direct Acquisition by Owner, the proposed financing arrangements for a qualified project may authorize the property owner to directly purchase necessary equipment and materials, contract directly-including through lease- power purchase agreement or other service contract for the installation or modification of a qualified project.
- Sec. 49.110, Recording of Notice for Contractual Assessment Required, requires a municipality that authorizes financing through contractual assessments to file written notice of each contractual assessment in the real property records of the recording district in which the property is located. This notice must contain the amount of the assessment, legal description of the property, name of each property owner and a reference to the statutory assessment lien.
- Sec. 29.49.120, Lien, states that contractual assessments as part of this program and any interest and penalties are liens on the assessed property and are prior and paramount to all liens except municipal tax liens and special assessments. Contractual assessment liens may be enforced as provided by AS 29.45.320- 29.45.470.
 - Contractual assessment liens are attached with the land and foreclosure of a property tax lien does not eliminate outstanding assessments.
 - Penalties and interest may be added to delinquent installments of the assessments, consistent with AS 29.45.250.
 - A municipality may recover costs and expenses, including attorney fees, if a suit is filed to recover delinquent installment of assessments, consistent with the delinquent property tax suit process.
- Sec. 29.49.130, Collection of Assessments, states that the governing body of a municipality may contract with the governing body of another taxing unit to collect assessments as outlined under this chapter.

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- Sec. 29.49.140, Bonds or Notes, authorizes a municipality to issue bonds or notes to finance qualified projects. Bonds for this purpose MAY NOT be general obligation bonds of the municipality.
 - Bonds issued under this section must be secured by one or more of the following:
 - payments of contractual assessments on benefited property in one or more specified regions
 - reserves established by the municipality from grants, bonds or net proceeds or lawfully available funds
 - 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
 - any other funds lawfully available for purposes consistent with this chapter.
 - The governing body of the municipality must include this information in a resolution approving the bonds or notes.
 - The municipality's contractual rights in connection with the issuance of bonds or notes is a first lien on the property, without further action by the municipality. The lien is valid and binding against any other person, with or without notice.
 - Bonds or notes issues under this chapter further an essential public and governmental purpose, including the:
 - Improvement of the reliability of local electrical systems
 - Reduction of energy costs
 - Reduction of energy demand on local utilities
 - Economic stimulation and development
 - Enhancement of property values, and
 - Enhancement of employment opportunities.
- Sec. 29.49.150, Joint Implementation, any combination of municipalities may agree to jointly implement or administer a program under this chapter, or contract with a third-party. If two or more municipalities jointly administer the program, a public hearing is to be held by the cooperating municipalities sufficient to satisfy the requirements of AS 29.49.060.
- Sec. 29.49.160, Prohibited Acts, states that participation in the program **must be voluntary**. A municipality that establishes a region under this chapter may not require a real property owner in that region to participate in the assessment program outlined in this chapter in order to issue a permit, license or other municipal authorization, or otherwise compel a property owner in the region to enter into a written contract to repay the financing of a qualified project through contractual assessments.
- Sec. 29.49.890, Allows the proposed PACE provisions to be available to home rule and general law municipalities.

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- Sec. 29.49.900, Definitions for terminology included in the chapter.
- Sec. 29.49.995, Short Title, indicates this chapter may be cited as the Municipal Property Assesse Clean Energy Act.

Section 5: Sets an immediate effective date.