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MEMORANDUM

March 25, 2015

SUBJECT: Changes based on March 21, 2015, Memo to Representative Vazquez (CSHB 118(CRA); Work Order No. 29-GH1021\H)

TO: Representative Cathy Tilton
Chair of the House Community and Regional Affairs Committee
Attn: Heath Hilyard

FROM: Susie L. Shutts *Susie Shutts*
Legislative Counsel

Enclosed is the House Community and Regional Affairs Committee Substitute for HB 118 that you requested.

As I discussed today with Mr. Hilyard, this CS removes the language regarding extraterritorial jurisdiction, on page 3, lines 15 - 17 of CSHB 118(ENE), and the language regarding public hearings, on page 4, lines 20 - 21 of CSHB 118(ENE).

Also, as I discussed today with Mr. Hilyard, this CS does not make any changes based on the discussion of application of this bill to general law municipalities on page 2 of the March 21, 2015, memo to Representative Vazquez. This means that a second class borough could acquire the powers authorized under this bill either on a nonareawide basis, under AS 29.35.210(c), by receiving voter approval by a majority of the voters living in the borough but outside all cities in the borough, or on an areawide basis under AS 29.35.210(d), by holding an areawide election or by transfer of the power from a city to the borough.¹

Please review these changes to make sure they reflect your intent, and let me know if you would like any additional changes.

SLS:lem
15-197.lem

Enclosure

¹ A first class borough could pass an ordinance creating a program under this bill on a nonareawide basis, under AS 29.35.200(a), and could acquire the powers authorized under this bill on an areawide basis by holding an areawide election or by transfer of the power from a city to the borough. AS 29.35.200(c). As discussed in the March 21, 2015, memo, 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. However, there are currently no third class boroughs, and an area may not incorporate as a third class borough. AS 29.05.031(b).

29-GH1021\H
Shutts
3/25/15

CS FOR HOUSE BILL NO. 118(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

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.

(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 assessed.

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

(b) A 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 of a qualified project on property of the owner. The financing repaid through assessments may be provided by a third party or, if authorized by municipal ordinance, by the municipality.

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

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

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

(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 designate an area of the municipality as a region where a record owner of real property in the region may enter into a written contract to impose an assessment to repay the financing of a qualified project by the owner on the owner's property and, if authorized by the municipal program, finance the qualified project.

(b) An area designated as a region by the governing body of a municipality under this section may include the entire municipality.

(c) 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 shall take the following actions in the following order:

(1) adopt a resolution of intent that includes

(A) a finding that financing qualified projects through contractual assessments serves a valid public purpose;

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

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

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

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

(F) a description of municipal debt servicing procedures for

any third-party financing and assessments;

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

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

(I) the names of the local official who administers the program and the appropriate assessor or person who collects 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 and the report prepared under AS 29.49.070; and

(3) adopt an ordinance establishing the program and the terms of the program, including each item included in the report required under AS 29.49.070, which may be incorporated by reference.

(b) 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.

(c) 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. 29.49.070. Report regarding assessment program. (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 for a contract between the municipality and the property owner specifying the terms of

- 1 (A) assessment under the program; and
- 2 (B) financing provided by a third party or the municipality, as
- 3 appropriate;
- 4 (3) if the proposed program provides for third-party financing, a form
- 5 for a contract between the municipality and the third party regarding the servicing of
- 6 the debt through assessments;
- 7 (4) a description of projects that may qualify for contractual
- 8 assessments;
- 9 (5) a plan for ensuring sufficient capital for third-party financing and,
- 10 if appropriate, raising capital for municipal financing for qualified projects;
- 11 (6) if bonds will be issued to provide capital to finance qualified
- 12 projects as part of the program as provided by AS 29.49.140,
- 13 (A) a maximum aggregate annual dollar amount for municipal
- 14 financing repaid by contractual assessments under the program;
- 15 (B) if requests appear likely to exceed the authorization
- 16 amount, a priority order for ranking a property owner's application for
- 17 financing repaid by contractual assessments; and
- 18 (C) a formula for calculating
- 19 (i) the interest rate and period during which contracting
- 20 owners would pay an assessment; and
- 21 (ii) the maximum amount of an assessment;
- 22 (7) a method for ensuring that the period of the contractual assessment
- 23 does not exceed the useful life of the qualified project that is the basis for the
- 24 assessment;
- 25 (8) a description of the application process and eligibility requirements
- 26 for financing of qualified projects repaid by contractual assessments under the
- 27 program;
- 28 (9) a method under (b) of this section for a property owner applying to
- 29 participate in the program to demonstrate the property owner's ability to fulfill
- 30 financial obligations repaid by contractual assessments;
- 31 (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.

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, the property owner shall

(1) give the 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 this chapter before the written contract for assessment between the owner and the municipality is executed; and

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

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

1 Contractual assessment liens may be enforced as provided in AS 29.45.320 -
2 29.45.470 for enforcement of property tax liens.

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

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

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

11 **Sec. 29.49.130. Collection of assessments.** The governing body of a
12 municipality may contract with the governing body of another taxing unit to perform
13 the duties of the municipality relating to collection of assessments imposed by the
14 municipality under this chapter.

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

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

21 (1) payments of contractual assessments on benefited property in one
22 or more specified regions designated under this chapter;

23 (2) reserves established by the municipality from grants, bonds, or net
24 proceeds or other lawfully available funds;

25 (3) municipal bond insurance, lines of credit, public or private
26 guaranties, standby bond purchase agreements, collateral assignments, mortgages, or
27 any other available means of providing credit support or liquidity; and

28 (4) any other funds lawfully available for purposes consistent with this
29 chapter.

30 (c) A municipal pledge of assessments, funds, or contractual rights in
31 connection with the issuance of bonds or notes by the municipality under this chapter

1 is a first lien on the assessments, funds, or contractual rights pledged in favor of the
2 person to whom the pledge is given, without further action by the municipality. The
3 lien is valid and binding against any other person, with or without notice.

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

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

7 (2) reduction of energy costs;

8 (3) reduction of energy demand on local utilities;

9 (4) economic stimulation and development;

10 (5) enhancement of property values; and

11 (6) enhancement of employment opportunities.

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

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

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

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

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

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

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

30 **Sec. 29.49.900. Definitions.** In this chapter,

31 (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).