

SENATE BILL NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY SENATOR COGHILL

Introduced: 1/25/17

Referred:

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

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

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

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

1 (4) license day care facilities;

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

3 **(6) establish an energy improvement assessment program under**

4 **AS 29.55.100 - 29.55.165.**

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

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

8 (1) provide transportation systems;

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

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

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

14 (5) provide air pollution control under AS 46.14.400;

15 (6) provide water pollution control;

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

18 (8) provide for economic development;

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

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

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

25 (12) engage in activities authorized under AS 29.47.460;

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

31 **(14) establish an energy improvement assessment program under**

1 **AS 29.55.100 - 29.55.165.**

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

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

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

10 **(6) establish an energy improvement assessment program under**

11 **AS 29.55.100 - 29.55.165.**

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

13 **Article 2. Municipal Property Assessed Clean Energy Act.**

14 **Sec. 29.55.100. Establishment of program.** (a) A municipality may establish
15 an energy improvement assessment program under AS 29.55.100 - 29.55.165.

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

18 (1) adopt a resolution of intent that includes

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

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

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

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

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

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

1 (2) provide a notice of the report required under AS 29.55.110 with the
 2 (A) location where the report is available for public inspection;
 3 (B) time and place for a public hearing on the proposed
 4 program; and

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

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

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

13 (c) A municipality may

14 (1) hire and set the compensation of a program administrator and
 15 program staff; or

16 (2) contract for professional services necessary to administer a
 17 program.

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

20 (1) program application fee paid by the property owner applying to the
 21 program;

22 (2) component of the interest rate on the assessment in the written
 23 contract between the municipality and the property owner; or

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

25 **Sec. 29.55.105. Assessment.** (a) A municipality that establishes a program
 26 under AS 29.55.100 may

27 (1) enter into a written contract with a record owner of eligible
 28 property in a region designated under AS 29.55.100 to impose an assessment to repay
 29 the financing of a qualified project on that property;

30 (2) contract with the governing body of another taxing unit to perform
 31 the duties of the municipality relating to collection of assessments imposed by the

1 municipality under this section.

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

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

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

6 (c) An assessment under this section may repay financing for costs of the
7 qualified project, including

8 (1) the cost of materials and labor necessary for the qualified project;

9 (2) permit fees;

10 (3) inspection fees;

11 (4) lender's fees;

12 (5) program application and administrative fees;

13 (6) qualified project development and engineering fees;

14 (7) third-party review fees, including verification review fees, under
15 AS 29.55.120; and

16 (8) any other fees or costs that may be incurred by the eligible property
17 owner incident to the installation, modification, or improvement on a specific or pro
18 rata basis, as determined by the municipality.

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

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

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

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

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

28 (1) a map showing the boundaries of each proposed region within
29 which the program is available;

30 (2) a form for a contract between the municipality and a property
31 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 assessments;
- 8 (5) a plan for ensuring sufficient capital for third-party financing and,
- 9 if appropriate, raising capital for municipal financing for qualified projects;
- 10 (6) if bonds will be issued to provide capital to finance qualified
- 11 projects as part of the program as provided by AS 29.55.140,
- 12 (A) a maximum aggregate annual dollar amount for municipal
- 13 financing repaid by assessments under the program;
- 14 (B) if requests appear likely to exceed the authorization
- 15 amount, a priority order for ranking a property owner's application for
- 16 financing repaid by assessments; and
- 17 (C) a formula for calculating
- 18 (i) the interest rate and period during which contracting
- 19 owners would pay an assessment; and
- 20 (ii) the maximum amount of an assessment;
- 21 (7) a method for ensuring that the period of the assessment does not
- 22 exceed the useful life of the qualified project that is the basis for the assessment;
- 23 (8) a description of the application process and eligibility requirements
- 24 for financing repaid by assessments under the program;
- 25 (9) a method for a property owner applying to participate in the
- 26 program to demonstrate the property owner's ability to fulfill financial obligations and
- 27 pay assessments; the method must be based on appropriate underwriting factors,
- 28 including
- 29 (A) verification that the property owner
- 30 (i) is the legal owner of the benefited property;
- 31 (ii) is current on mortgage and property tax payments;

1 and

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

3 (B) an appropriate ratio between the amount of the assessment
4 and the assessed value of the property;

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

7 (11) the lender notice requirement under AS 29.55.115;

8 (12) the review requirement under AS 29.55.120;

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

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

13 (b) The municipality shall make the report available for public inspection

14 (1) on the Internet website of the municipality; and

15 (2) at the primary governing offices of the municipality.

16 **Sec. 29.55.115. Notice to mortgage holder required for participation.**

17 Before a municipality may enter into a written contract with a record owner of eligible
18 property to impose an assessment to repay the financing of a qualified project under
19 AS 29.55.100, the property owner shall

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

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

25 **Sec. 29.55.120. Review required.** A program established under AS 29.55.100
26 must require from an independent third party

27 (1) a review of the energy baseline conditions and the projected energy
28 savings for each proposed qualified project; and

29 (2) after a qualified project is completed, verification that the qualified
30 project was properly completed and is operating as intended.

31 **Sec. 29.55.125. Direct acquisition by owner.** The proposed arrangements for

1 financing a qualified project may authorize the property owner to

2 (1) purchase directly the related equipment and materials for the
3 qualified project; and

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

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

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

11 (1) the amount of the assessment;

12 (2) the legal description of the property;

13 (3) the name of each property owner; and

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

16 **Sec. 29.55.135. Lien.** (a) Assessments under AS 29.55.105 and any interest or
17 penalties on the assessments are liens on the property assessed and are prior and
18 paramount to all liens except municipal tax liens and special assessments. Assessment
19 liens may be enforced as provided in AS 29.45.320 - 29.45.470 for enforcement of
20 property tax liens.

21 (b) Assessment liens run with the land, and that portion of the assessment
22 under the assessment contract that has not yet become due is not eliminated by
23 foreclosure of a property tax lien.

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

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

29 **Sec. 29.55.140. Bonds or notes.** (a) A municipality may issue bonds or notes
30 to finance qualified projects subject to assessment under AS 29.55.105.

31 (b) Bonds or notes issued under this section may not be general obligations of

1 the municipality. The bonds or notes must be secured by one or more of the following,
 2 as provided by the governing body of the municipality in the resolution or ordinance
 3 approving the bonds or notes:

4 (1) payments of assessments on benefited property in one or more
 5 specified regions designated under AS 29.55.100;

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

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

11 (4) any other funds lawfully available for purposes consistent with
 12 AS 29.55.100 - 29.55.165.

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

18 (d) Bonds or notes issued under this section further essential public and
 19 governmental purposes, including

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

21 (2) reduction of energy costs;

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

23 (4) economic stimulation and development;

24 (5) enhancement of property values; and

25 (6) enhancement of employment opportunities.

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

28 (1) a third party to administer a program under AS 29.55.100;

29 (2) one or more municipalities to jointly implement or administer a
 30 program under AS 29.55.100; if two or more municipalities jointly implement a
 31 program, a single public hearing held jointly by the cooperating municipalities is

1 sufficient to satisfy the requirement of AS 29.55.100(b)(3).

2 **Sec. 29.55.150. Prohibited acts.** A municipality that establishes a region under
3 AS 29.55.100 may not make the issuance of a permit, license, or other authorization
4 from the municipality to a person who owns property in the region contingent on the
5 person entering into a written contract to repay the financing of a qualified project
6 through assessments under AS 29.55.105, or otherwise compel a person who owns
7 property in the region to enter into a written contract to repay the financing of a
8 qualified project through assessments under AS 29.55.105.

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

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

12 (1) "eligible property" means privately owned commercial or industrial
13 real property;

14 (2) "program" means a program established under AS 29.55.100;

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

19 (4) "qualified project" means the installation or modification of a
20 qualified improvement.

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

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