

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: 4/3/15

Referred: Finance

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 **municipalities; imposing fees; and providing for an effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 29.10.200 is amended by adding a new paragraph to read:

6 (65) AS 29.49 (energy improvement assessment programs).

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

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

10 (1) provide transportation systems;

11 (2) provide water pollution control;

12 (3) provide air pollution control in accordance with AS 46.14.400;

13 (4) license day care facilities;

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

(6) establish an energy improvement assessment program under**AS 29.49.**

* **Sec. 3.** 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 29.49.**

* **Sec. 4.** 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 under AS 29.49.060 may exercise powers granted under this chapter.

Sec. 29.49.020. Authorized assessments. (a) A municipality may impose an assessment under this chapter to repay the financing of qualified projects on real property located in the municipality.

(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

1 a written contract with a record owner of real property in the municipality to impose
 2 an assessment to repay the financing of a qualified project on property of the owner.
 3 The financing repaid through assessments may be provided by a third party or, if
 4 authorized by municipal ordinance, by the municipality.

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

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

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

14 (1) the cost of materials and labor necessary for installation or
 15 modification of a qualified improvement;

16 (2) permit fees;

17 (3) inspection fees;

18 (4) lender's fees;

19 (5) program application and administrative fees;

20 (6) project development and engineering fees;

21 (7) third-party review fees, including verification review fees, under
 22 AS 29.49.090; and

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

26 **Sec. 29.49.050. Applicability of program.** (a) A program established by a
 27 borough under this chapter may be established only on an areawide basis.

28 (b) Notwithstanding (a) of this section and AS 29.35.250, a city inside a
 29 borough may, by city ordinance, exempt the city or terminate an exemption for the
 30 city from a program established in the borough under this chapter. A city that is
 31 exempted shall send a copy of the ordinance exempting the city from a borough

1 program established under this chapter to the borough within 30 days after the date of
2 adoption of the ordinance.

3 (c) A program established by a city under this chapter shall apply to the entire
4 city.

5 (d) Notwithstanding AS 29.35.250(b), on adoption of a borough ordinance to
6 establish a program under this chapter, a city within the borough may not establish a
7 program under this chapter, and the borough succeeds to all of the rights, powers,
8 duties, assets, and liabilities of a city within the borough with respect to any program
9 established by the city under this chapter.

10 **Sec. 29.49.060. Procedure for establishment of program.** (a) To establish a
11 program under this chapter, the governing body of a municipality shall take the
12 following actions in the following order:

13 (1) adopt a resolution of intent that includes

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

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

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

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

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

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

29 (G) the time and place for a public hearing on the proposed
30 program; and

31 (H) the names of the local official who administers the program

1 and the appropriate assessor or person who collects the proposed contractual
2 assessments with property taxes imposed on the assessed property;

3 (2) hold a public hearing at which the public may comment on the
4 proposed program and the report prepared under AS 29.49.070; and

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

8 (b) A municipality may

9 (1) hire and set the compensation of a program administrator and
10 program staff; or

11 (2) contract for professional services necessary to administer a
12 program.

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

15 (1) program application fee paid by the property owner applying to the
16 program;

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

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

20 **Sec. 29.49.070. Report regarding assessment program.** (a) The report for a
21 proposed program required by AS 29.49.060 must include

22 (1) a form for a contract between the municipality and the property
23 owner specifying the terms of

24 (A) assessment under the program; and

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

27 (2) if the proposed program provides for third-party financing, a form
28 for a contract between the municipality and the third party regarding the servicing of
29 the debt through assessments;

30 (3) a description of projects that may qualify for contractual
31 assessments;

1 (4) a plan for ensuring sufficient capital for third-party financing and, if
2 appropriate, raising capital for municipal financing for qualified projects;

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

5 (A) a maximum aggregate annual dollar amount for municipal
6 financing repaid by contractual assessments under the program;

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

10 (C) a formula for calculating

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

13 (ii) the maximum amount of an assessment;

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

17 (7) a description of the application process and eligibility requirements
18 for financing of qualified projects repaid by contractual assessments under the
19 program;

20 (8) a method under (b) of this section for a property owner applying to
21 participate in the program to demonstrate the property owner's ability to fulfill
22 financial obligations repaid by contractual assessments;

23 (9) a statement explaining the manner in which property will be
24 assessed and assessments will be collected;

25 (10) a statement explaining the lender notice requirement under
26 AS 29.49.080;

27 (11) a statement explaining the review requirement under
28 AS 29.49.090;

29 (12) a description of marketing and participant education services to be
30 provided for the program;

31 (13) a description of quality assurance and antifraud measures to be

1 instituted for the program; and

2 (14) the procedures for collecting the proposed contractual assessments.

3 (b) The municipality shall establish a method by which a property owner shall
4 demonstrate financial ability based on appropriate underwriting factors, including

5 (1) verification that the property owner applying to participate in the
6 program is

7 (A) the legal owner of the benefited property;

8 (B) current on mortgage and property tax payments; and

9 (C) not insolvent or in bankruptcy proceedings; and

10 (2) an appropriate ratio between the amount of the assessment and the
11 assessed value of the property.

12 (c) The municipality shall make the report available for public inspection

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

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

15 **Sec. 29.49.080. Notice to mortgage holder required for participation.**

16 Before a municipality may enter into a written contract with a record owner of real
17 property to impose an assessment to repay the financing of a qualified project under
18 this chapter, the property owner shall

19 (1) give the holder of a mortgage lien on the property at least 30 days'
20 written notice of the intention of the property owner to participate in a program under
21 this chapter before the written contract for assessment between the owner and the
22 municipality is executed; and

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

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

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

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

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

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

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

10 **Sec. 29.49.110. Recording of notice of contractual assessment.** (a) A
11 municipality that authorizes financing through contractual assessments under this
12 chapter shall file written notice of each contractual assessment in the real property
13 records of the recording district in which the property is located.

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

15 (1) the amount of the assessment;

16 (2) the legal description of the property;

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

18 (4) a reference to the statutory assessment lien provided under this
19 chapter.

20 **Sec. 29.49.120. Lien.** (a) Contractual assessments under this chapter and any
21 interest or penalties on the assessments are liens on the property assessed and are prior
22 and paramount to all liens except municipal tax liens and special assessments.
23 Contractual assessment liens may be enforced as provided in AS 29.45.320 -
24 29.45.470 for enforcement of property tax liens.

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

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

30 (d) A municipality may recover costs and expenses, including attorney fees, in
31 a suit to collect a delinquent installment of an assessment in the same manner as in a

1 suit to collect a delinquent property tax.

2 **Sec. 29.49.130. Collection of assessments.** The governing body of a
3 municipality may contract with the governing body of another taxing unit to perform
4 the duties of the municipality relating to collection of assessments imposed by the
5 municipality under this chapter.

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

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

12 (1) payments of contractual assessments on property benefited under
13 this chapter;

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

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

19 (4) any other funds lawfully available for purposes consistent with this
20 chapter.

21 (c) A municipal pledge of assessments, funds, or contractual rights in
22 connection with the issuance of bonds or notes by the municipality under this chapter
23 is a first lien on the assessments, funds, or contractual rights pledged in favor of the
24 person to whom the pledge is given, without further action by the municipality. The
25 lien is valid and binding against any other person, with or without notice.

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

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

29 (2) reduction of energy costs;

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

31 (4) economic stimulation and development;

1 (5) enhancement of property values; and

2 (6) enhancement of employment opportunities.

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

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

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

10 **Sec. 29.49.160. Prohibited acts.** A municipality that establishes a program
11 under this chapter may not

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

16 (2) otherwise compel a person who owns property in the municipality
17 to enter into a written contract to repay the financing of a qualified project through
18 contractual assessments under this chapter.

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

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

22 (1) "program" means a program established under this chapter;

23 (2) "qualified improvement" means a permanent improvement fixed to
24 real property and intended to decrease energy consumption or demand, including a
25 product, device, or interacting group of products or devices that uses energy
26 technology to generate electricity, provide thermal energy, or regulate temperature;

27 (3) "qualified project" means the installation or modification of a
28 qualified improvement;

29 (4) "real property" means privately owned commercial or industrial real
30 property.

31 **Sec. 29.49.995. Short title.** This chapter may be cited as the Municipal

- 1 Property Assessed Clean Energy Act.
- 2 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).