

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON ENERGY**

March 17, 2015  
10:19 a.m.

**MEMBERS PRESENT**

Representative Jim Colver, Co-Chair  
Representative Benjamin Nageak  
Representative David Talerico  
Representative Cathy Tilton  
Representative Matt Claman  
Representative Adam Wool

**MEMBERS ABSENT**

Representative Liz Vazquez, Co-Chair

**COMMITTEE CALENDAR**

HOUSE BILL NO. 118

"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."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 118

SHORT TITLE: MUNI ENERGY IMPROVEMNT ASSESSMNTS/BONDS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/18/15	(H)	READ THE FIRST TIME - REFERRALS
02/18/15	(H)	ENE, CRA, FIN
03/05/15	(H)	ENE AT 10:15 AM CAPITOL 106
03/05/15	(H)	Heard & Held
03/05/15	(H)	MINUTE(ENE)
03/17/15	(H)	ENE AT 10:15 AM CAPITOL 17

**WITNESS REGISTER**

EMILY FORD, Energy Policy and Outreach Manager  
Alaska Energy Authority

Department of Commerce, Community & Economic Development  
Anchorage, Alaska

**POSITION STATEMENT:** Reviewed HB 118 on behalf of the sponsor, the House Rules Standing Committee at the request of the governor.

GENE THERRIAULT, Deputy Director for Energy Policy Development  
Alaska Energy Authority  
Department of Commerce, Community & Economic Development  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 118.

KATHIE WASSERMAN, Executive Director  
Alaska Municipal League  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 118.

LUKE HOPKINS, Mayor  
Fairbanks North Star Borough  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 118.

CHRIS ROSE, Executive Director  
Renewable Energy Alaska Project  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 118.

DAVID DUNSMORE, Staff  
Representative Adam Wool  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained Amendment 1 to HB 118.

#### **ACTION NARRATIVE**

[10:19:25 AM](#)

**CO-CHAIR JIM COLVER** called the House Special Committee on Energy meeting to order at 10:19 a.m. Representatives Nageak, Talerico, Tilton, Claman, and Colver were present at the call to order. Representative Wool arrived as the meeting was in progress.

#### **HB 118-MUNI ENERGY IMPROVEMNT ASSESSMNTS/BONDS**

[10:19:57 AM](#)

CO-CHAIR COLVER announced that the only order of business would be HOUSE BILL NO. 118, "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."

[10:20:13 AM](#)

EMILY FORD, Energy Policy and Outreach Manager, Alaska Energy Authority (AEA), Department of Commerce, Community & Economic Development (DCCED), speaking on behalf of the House Rules Standing Committee at the request of the governor, sponsor, provided a review of HB 118, which was originally introduced to the committee on 3/5/15. Ms. Ford said Commercial Property Assessed Clean Energy (PACE) programs allow property owners to finance qualifying energy efficiency improvements over time through a voluntary assessment on their property tax bill. The proposed bill authorizes the expansion of taxation authorities of municipalities in order for them to participate in this optional program. Authorizing legislation would create statewide consistency while allowing more control at the local level to implement the program. She noted that local lending sources can be used, and municipalities can choose to use a local government-driven process by issuing bonds with a PACE office administering the program between commercial property owners and potential lenders, or municipalities can use a private sector-driven process, with a third-party administrator under contract. In most states, a hybrid model is used to provide access to all potential funding sources such as bonds, revolving loan funds, and private capital. Ms. Ford advised that smaller local governments which cannot implement the program on their own can contract with other local governments.

[10:22:52 AM](#)

MS. FORD paraphrased from the following written sectional analysis [original punctuation provided]:

Section 1: 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 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 Designation of Region, allows the municipality to participate in the program and designate an area of the municipality for participation. This 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 region 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 a resolution establishing and defining the terms of the program, including: each item included in the report under AS 29.49.070; a description of each aspect of the program that may only be amended after another public hearing. The resolution may incorporate the report or the amended version of the report as reference. The program and terms may be amended by a resolution from the governing body of the municipality. 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 boundaries of the proposed region a form contract between the municipality and property owner that specifies the terms of the assessment and either the third-party or municipal financing. If third-party financing is used, a form contract must be included regarding the servicing of the debt through assessments. A description of the types of qualified projects and a plan for ensuring sufficient capital for third-party financing. If appropriate and municipal bond financing is used, the report must identify: 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 assessment and collection process provided by 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. 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 the 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. 29.49.110, 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. Sec. 29.49.140, Bonds or Notes, authorizes a municipality to issue bonds or notes to finance qualified projects. 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. 29.49.900, Definitions, defines terminology included in the chapter. Sec. 29.49.995, Short Title, indicates this chapter may be cited as the Municipal Property Assessment Clean Energy Act. Section 2 sets an immediate effective date.

[10:31:52 AM](#)

REPRESENTATIVE NAGEAK observed that PACE financing places a primary lien on property, and asked for the consequences if a property owner defaults on the loan.

MS. FORD responded that if a property tax payment is missed, the property reverts to the municipality; however, the default rates on property taxes are very low, thus this is a secure financing opportunity.

[10:33:26 AM](#)

GENE THERRIAULT, Deputy Director for Energy Policy Development, Alaska Energy Authority (AEA), Department of Commerce, Community & Economic Development (DCCED), added that if a property owner takes out a PACE loan, the loan is the senior lien on the property. If there is a default, the municipality can foreclose, sell the property, and the PACE loan obligation passes to the new owner. He advised this is a benefit of PACE programs because a business can make improvements, amortize the payments over a long period of time, and then sell to a new

owner who would pay thereafter. Also, PACE rates are generally lower than market rates.

CO-CHAIR COLVER questioned whether the default is added to an owner's property taxes.

MR. THERRIAULT explained that the PACE loan repayment becomes an additional assessment on the owner's property tax bill, which is a contractual arrangement between the property owner and the local government.

CO-CHAIR COLVER asked whether PACE financing could be used to finance consumers' conversions to natural gas in the North Pole area. He suggested this could be a vehicle to pay for an assessment to cover the costs of extending the main gas line to each house.

MR. THERRIAULT said it could be, although PACE is a statewide program for any municipality that has property tax powers. Also, this program applies only to businesses, but conversions from fuel oil to natural gas do qualify as energy efficient improvements.

CO-CHAIR COLVER inquired as to the availability of provisions for the cost of residential conversions to natural gas, and asked whether the program can be broadened.

[10:37:24 AM](#)

MR. THERRIAULT said when PACE was first considered there were two programs, commercial and residential; however, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation opposed the residential program because the PACE loan becomes the superior lien. He noted that residential programs are possible, although with lesser impact, more governmental support, higher interest rates, and more reserves. In addition, the PACE loan must be cashed out if the property is sold. Mr. Therriault cautioned against adding a residential program to HB 118. The Fairbanks North Star Borough seeks to provide a residential financing program.

CO-CHAIR COLVER commented on the senior position of the assessment, which is not required to be paid at closing of the sale of a property.

MR. THERRIAULT pointed out that a buyer is provided with notice of the lien.

REPRESENTATIVE WOOL asked for the length of the PACE loan.

MR. THERRIAULT responded the term is generally 10-20 years, which is beneficial to business owners. In further response to Representative Wool, he said if there is an existing mortgage on a property, the lender must give permission to move to a secondary lien position behind the PACE financing. Experience has shown that lenders are willing to agree because the collateral for their loan is improved.

[10:42:53 AM](#)

REPRESENTATIVE CLAMAN asked whether municipalities would use cash reserves, or create new bonding for the necessary funds to make the loans.

MR. THERRIAULT explained that local governments can bond to create a pool of money to lend, but cannot use general obligation (GO) bonds. Municipalities can also use local lenders that may use low-cost capital because the loans are attractive to lenders. Finally, many municipalities blend bond funds with funds from local lenders.

REPRESENTATIVE CLAMAN surmised municipalities would look at ways, without using GO bonds, to secure a source of funds to loan to the eligible businesses.

MR. THERRIAULT said correct. He advised that revenue bonds are based on the revenue from the "repayment stream" of the loans that is pledged to secure the bond.

REPRESENTATIVE CLAMAN understood that the municipality would be signing on to guarantee the loan; however, the municipality is assured by a loan secured by the business, and in first position for repayment.

MR. THERRIAULT said correct. The bill directs the local government to collect any fees required, but the local government does not actually guarantee the loan because it is a revenue bond based on the repayment revenue stream, unlike a GO bond. In fact, after default, the municipalities do not have to "step in," but they may want to establish a loan loss pool.

REPRESENTATIVE CLAMAN opined the municipality may be at some risk, but it is low, and municipal tax liens and special assessments also are placed superior to prior lenders.

MR. THERRIAULT said correct.

[10:48:13 AM](#)

CO-CHAIR COLVER opened public testimony on HB 118.

[10:48:37 AM](#)

KATHIE WASSERMAN, Executive Director, Alaska Municipal League, informed the committee that AML is in support of HB 118. The bill is voluntary and provides municipalities tools in order to benefit businesses and, hopefully, municipalities. She acknowledged there are some risks; however, the bill is of value to first class cities and boroughs with taxing authority, and allows for a public process. Ms. Wasserman opined the bill is not a detriment to the state or to municipalities. In response to Co-Chair Colver, she said second class cities do not levy a property tax.

[10:51:19 AM](#)

LUKE HOPKINS, Mayor, Fairbanks North Star Borough, stated that HB 118 works for the Fairbanks North Star Borough in that first class cities within the borough have the local option to participate. For commercial properties to convert to another energy source is expensive, and he expressed his support for businesses to have a mechanism to provide financing to convert to lower-cost and more efficient energy. Furthermore, conversion to more efficient energy will help with the poor air quality in Fairbanks. The Fairbanks North Star Borough has a three-year process for the collection of property taxes, which allows for general discussions with property owners prior to foreclosure. Mayor Hopkins concluded that the bill is well-conceived, and provides extensive guidelines. He spoke in support of the bill and for a residential PACE program in the future.

CO-CHAIR COLVER asked Mayor Hopkins to address the proposed amendments.

MAYOR HOPKINS stated he was unaware of any problems with the amendments, although he had not reviewed the amendments in detail. He asked for the committee's support of amendments presented by the agency.

[10:55:29 AM](#)

CHRIS ROSE, Executive Director, Renewable Energy Alaska Project (REAP), said REAP is a statewide education and advocacy group for renewables and energy efficiency - made up of a coalition of over 80 organizations - which has promoted the PACE concept for two years. He expressed REAP's support for HB 118 and the Alaska Energy Authority's efforts to provide a solution for business owners who want to make their buildings more energy efficient. Mr. Rose acknowledged there are excellent programs for residential weatherization, and a public building loan fund; however, these programs are not available to owners of commercial buildings.

[10:57:10 AM](#)

CO-CHAIR COLVER, after determining no one further wished to testify, closed public testimony.

[10:57:43 AM](#)

REPRESENTATIVE WOOL made a motion to adopt two amendments, labeled 29-GH1021\A.1, Shutts, 3/11/15, and 29-GH1021\A.3, Shutts, 3/16/15, which at the direction of Co-Chair Colver, were combined as Amendment 1, and read:

Amendment labeled 29-GH1021\A.1,

Page 1, following line 5:

Insert a new bill section to read:

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

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

Page 1, line 6:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

Page 10, following line 12:

Insert a new section to read:

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

Amendment labeled 29-GH1021\A.3,

Page 4, lines 9 - 10:  
Delete "as provided by"  
Insert "required under"

Page 4, line 14, following "(I)":  
Delete "a"

Page 4, line 19:  
Delete ", including the report required by"  
Insert "and the report required under"

Page 4, line 20:  
Delete "a resolution"  
Insert "an ordinance"

Page 4, line 22:  
Following "report":  
Insert "required"  
Following "AS 29.49.070":  
Insert ", which may be incorporated by reference"

Page 4, lines 25 - 29:  
Delete all material.

Reletter the following subsections accordingly.

[10:58:30 AM](#)

CO-CHAIR COLVER objected for the purposes of discussion.

REPRESENTATIVE WOOL explained Amendment 1 changes the language in the bill from "resolution" to "ordinance" in order to comply with Alaska legal conventions and more easily adapt to use by municipalities.

[10:59:22 AM](#)

DAVID DUNSMORE, Staff, Representative Adam Wool, explained the portion of Amendment 1 labeled A.1 [text previously provided] expands HB 118 to apply to home rule municipalities as advised by AEA. The portion of Amendment 1 labeled A.3 [text previously provided] would streamline the process for municipalities to adopt the program directed by HB 118. As advised by AEA and the Department of Law, this change is necessary for municipalities to implement the PACE program, without changing the intent of the bill.

REPRESENTATIVE NAGEAK asked for clarification on the amendments.

MR. DUNSMORE said the amendments labeled A.1 and A.3 are combined into Amendment 1.

[11:02:18 AM](#)

CO-CHAIR COLVER removed his objection. There being no further objection, Amendment 1 was adopted.

REPRESENTATIVE TILTON disclosed that a family member provides energy ratings related to HB 118.

[11:03:58 AM](#)

HB 118 was held over.

[11:04:10 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Energy meeting was adjourned at 11:04 a.m.