

SENATE CS FOR HOUSE BILL NO. 227(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/20/22

Referred: Labor & Commerce

Sponsor(s): REPRESENTATIVES SCHRAGE, Claman, Fields, Spohnholz, Tarr, Snyder, Josephson, Wool, Story

SENATORS Hughes, Kiehl, Kawasaki, Micciche

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal energy and resilience improvement assessment programs;
2 and providing for an effective date."

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

4 * **Section 1.** AS 29.10.200(64) is amended to read:

5 (64) AS 29.55.100 - 29.55.165 (energy and resilience improvement
6 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 and resilience improvement assessment program under AS 29.55.100 - 29.55.165.

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

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

- (1) provide transportation systems;
- (2) regulate the offering for sale, exposure for sale, sale, use, or explosion of fireworks;
- (3) license, impound, and dispose of animals;
- (4) subject to AS 29.35.050, provide garbage, solid waste, and septic waste collection and disposal;
- (5) provide air pollution control under AS 46.14.400;
- (6) provide water pollution control;
- (7) participate in federal or state loan programs for housing rehabilitation and improvement for energy conservation;
- (8) provide for economic development;
- (9) provide for the acquisition and construction of local service roads and trails under AS 19.30.111 - 19.30.251;
- (10) establish an emergency services communications center under AS 29.35.130;
- (11) subject to AS 28.01.010, regulate the licensing and operation of motor vehicles and operators;
- (12) engage in activities authorized under AS 29.47.460;
- (13) contain, clean up, or prevent a release or threatened release of oil or a hazardous substance, and exercise a power granted to a municipality under AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this paragraph in a manner that is consistent with a regional master plan prepared by the Department of Environmental Conservation under AS 46.04.210;
- (14) establish an energy and resilience improvement assessment program under AS 29.55.100 - 29.55.165.

* **Sec. 4.** 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 **and resilience** improvement assessment program under AS 29.55.100 - 29.55.165.

* **Sec. 5.** AS 29.55.100(a) is amended to read:

(a) A municipality may establish an energy **and resilience** improvement assessment program under AS 29.55.100 - 29.55.165 to finance the **construction, installation,** or modification of permanent improvements that are [(1)] fixed to **new construction or** existing privately owned commercial or industrial property [;] and **that**

(1) are energy improvement projects designed [(2) INTENDED] to reduce energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature; **or**

(2) improve building resilience; resilience improvement projects include projects for seismic improvements, stormwater management, flood mitigation and protection, fire hardening, fire or wind resistance, erosion management, snow load management, microgrids for energy storage and backup power generation, water or wastewater efficiency including reuse and energy recovery, electric vehicle charging stations, retrofitting that improves the envelope, structure, or systems of the building, and any other improvement project approved by a municipality as a resilience improvement project.

* **Sec. 6.** AS 29.55.100(b) is amended to read:

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

- 1 (1) adopt a resolution of intent that includes
- 2 (A) a finding that financing energy and resilience
- 3 improvement projects through assessments serves a valid public purpose;
- 4 (B) a statement that the municipality intends to allow privately
- 5 owned commercial or industrial property owners to make assessments to repay
- 6 financing for energy and resilience improvement projects;
- 7 (C) a description of energy and resilience improvement
- 8 projects that may be subject to assessments;
- 9 (D) a description of the boundaries of a region within the
- 10 municipality's boundaries in which the program is available;
- 11 (E) a description of any proposed arrangements to make third-
- 12 party financing available or any financing the municipality will provide for
- 13 energy and resilience improvement projects; and
- 14 (F) a description of municipal debt servicing procedures for
- 15 any third-party financing and assessments;
- 16 (2) prepare the report required under AS 29.55.110 and provide notice
- 17 of the report with the
- 18 (A) location where the report is available for public inspection;
- 19 (B) time and place for a public hearing on the proposed
- 20 program; and
- 21 (C) name of the local official who administers the program and
- 22 the appropriate assessor or person who collects the proposed assessments with
- 23 property taxes imposed on the assessed property;
- 24 (3) hold a public hearing at which the public may comment on the
- 25 proposed program and the report prepared under AS 29.55.110; and
- 26 (4) adopt an ordinance establishing the program and the terms of the
- 27 program, including each item included in the report required under AS 29.55.110,
- 28 which may be incorporated by reference.
- 29 * **Sec. 7.** AS 29.55.100(d) is amended to read:
- 30 (d) A municipality may impose fees to offset the costs of administering a
- 31 program. The fees authorized under this subsection may be imposed [ASSESSED] as

1 a

2 (1) program application fee paid by the property owner applying to the
3 program;

4 (2) **servicing fee included in** [COMPONENT OF THE INTEREST
5 RATE ON] the assessment in the written contract between the municipality and the
6 property owner; or

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

8 * **Sec. 8.** AS 29.55.105(a) is amended to read:

9 (a) A municipality that establishes a program under AS 29.55.100 may

10 (1) enter into a written contract with a record owner of privately owned
11 commercial or industrial property in a region designated under AS 29.55.100 to
12 impose an assessment to repay the financing of an energy **or resilience** improvement
13 project on that property;

14 (2) contract with the governing body of another taxing unit to perform
15 the duties of the municipality relating to collection of assessments imposed by the
16 municipality under this section.

17 * **Sec. 9.** AS 29.55.105(c) is amended to read:

18 (c) An assessment under this section may repay financing for costs of an
19 energy **or resilience** improvement project, including

20 (1) the cost of materials and labor necessary for the energy **or**
21 **resilience** improvement project;

22 (2) permit fees;

23 (3) inspection fees;

24 (4) lender's fees;

25 (5) program application and administrative fees;

26 (6) energy **or resilience** improvement project development and
27 engineering fees;

28 (7) third-party review fees, including verification review fees, under
29 AS 29.55.120; [AND]

30 (8) **capitalized interest;**

31 **(9) interest reserves;**

1 **(10) escrow for prepaid property tax or insurance;**

2 **(11) capitalized extended manufacturer's warranty or**
 3 **maintenance agreement costs during the period of assessment; and**

4 **(12)** any other fees or costs that may be incurred by the property owner
 5 incident to the installation, modification, or improvement on a specific or pro rata
 6 basis, as determined by the municipality.

7 * **Sec. 10.** AS 29.55.105(f) is amended to read:

8 (f) A municipality may not impose a period of assessment under this section
 9 on privately owned commercial or industrial property that exceeds **30** [20] years or the
 10 useful life of the project that is the basis for the assessment [, WHICHEVER IS
 11 SHORTER].

12 * **Sec. 11.** AS 29.55.105(g) is amended to read:

13 (g) **The** [EXCEPT AS OTHERWISE PROVIDED IN (h) OF THIS
 14 SECTION, THE] total financing **for costs of an energy or resilience improvement**
 15 **project** [REPAID BY ASSESSMENTS

16 (1)] may not exceed **25** [20] percent of the **market** [ASSESSED] value
 17 of the property at the time of program application **or completion of the proposed**
 18 **energy or resilience improvement project** [;

19 (2) MUST BE EXCEEDED BY THE PROJECTED MONETARY
 20 SAVINGS TO THE PROPERTY OWNER OVER THE LIFE OF THE
 21 ASSESSMENT AS A RESULT OF THE ENERGY IMPROVEMENT PROJECT].

22 * **Sec. 12.** AS 29.55.105 is amended by adding a new subsection to read:

23 (i) An assessment under this section may repay financing for costs of a
 24 proposed energy or resilience improvement project or an energy or resilience
 25 improvement project completed within the past two years.

26 * **Sec. 13.** AS 29.55.110(a) is amended to read:

27 (a) The municipality shall prepare a report for a proposed program required by
 28 AS 29.55.100 that includes

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

31 (2) a form for a contract between the municipality and a property

owner specifying the terms of

(A) assessment under the program; and

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

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

(4) a description of **energy and resilience improvement** projects that may qualify for assessments;

(5) a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for municipal financing for energy **and resilience** improvement projects;

(6) if bonds will be issued to provide capital to finance energy **and resilience** improvement projects as part of the program as provided by AS 29.55.140,

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

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

(C) a formula for calculating

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

(ii) the maximum amount of an assessment;

(7) a method to calculate a period of assessment consistent with AS 29.55.105(f);

(8) a description of the application process and eligibility requirements for financing repaid by assessments under the program;

(9) a method for a property owner applying to participate in the program to demonstrate the property owner's ability to fulfill financial obligations and pay assessments; the method must be based on appropriate underwriting factors, including

- 1 (A) verification that the property owner
 2 (i) is the legal owner of the benefited property;
 3 (ii) is current on mortgage and property tax payments;
 4 and
 5 (iii) is not insolvent or in bankruptcy proceedings; and
 6 (B) an appropriate ratio between the amount of the assessment
 7 and the market [ASSESSED] value of the property;
 8 (10) an explanation of the manner in which the municipality shall
 9 assess the property and collect assessments;
 10 (11) the lender notice requirement under AS 29.55.115;
 11 (12) the review requirement under AS 29.55.120;
 12 (13) a description of marketing and participant education services
 13 provided by the municipality for the program;
 14 (14) a description of quality assurance and antifraud measures
 15 instituted by the municipality for the program and the consequence or penalty
 16 prescribed by the municipality for a property owner who participates in the program
 17 but does not complete an energy or resilience improvement project as proposed; and
 18 (15) a description of the insurance requirements, including a
 19 requirement that the property owner have insurance against damage to the energy or
 20 resilience improvement project for the life of the assessment.

21 * **Sec. 14.** AS 29.55.115 is amended to read:

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

23 Before a municipality may enter into a written contract with a record owner of
 24 property to impose an assessment to repay the financing of an energy or resilience
 25 improvement project under AS 29.55.100, the property owner shall

- 26 (1) give each holder of a mortgage lien on the property at least 30
 27 days' [DAYS"] written notice of the intention of the property owner to participate in a
 28 program under AS 29.55.100; and
 29 (2) obtain [A] written consent from each holder of a mortgage lien on
 30 the property.

31 * **Sec. 15.** AS 29.55.120 is amended to read:

1 **Sec. 29.55.120. Review required.** The record owner of property on which an
 2 assessment is imposed under AS 29.55.105 shall obtain [FROM AN INDEPENDENT,
 3 THIRD-PARTY QUALIFIED ENERGY AUDITOR THE FOLLOWING:]

4 (1) for each proposed energy or resilience improvement project,

5 (A) a review of the energy, [OR] emissions, or resilience
 6 baseline conditions, as appropriate; and

7 (B) the projected reduction in energy costs, energy
 8 consumption or demand, or emissions affecting local air quality, or increase in
 9 resilience, as appropriate; and

10 (2) for each completed energy or resilience improvement project,
 11 verification that the energy or resilience improvement project was properly completed
 12 and is operating as intended.

13 * **Sec. 16.** AS 29.55.125 is amended to read:

14 **Sec. 29.55.125. Direct acquisition by owner.** The proposed arrangements for
 15 financing an energy or resilience improvement project may authorize the property
 16 owner to

17 (1) purchase directly the related equipment and materials for the
 18 energy or resilience improvement project; and

19 (2) contract directly, including through lease, a power purchase
 20 agreement, or other service contract, for the energy or resilience improvement project.

21 * **Sec. 17.** AS 29.55.135(b) is amended to read:

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

25 * **Sec. 18.** AS 29.55.140(a) is amended to read:

26 (a) A municipality may issue bonds or notes to finance energy and resilience
 27 improvement projects subject to assessment under AS 29.55.105.

28 * **Sec. 19.** AS 29.55.140(d) is amended to read:

29 (d) Bonds or notes issued under this section must further one or more of the
 30 following essential public and governmental purposes:

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

- (2) reduction of energy costs;
- (3) reduction of energy demand on local utilities;
- (4) reduction of emissions affecting local air quality;
- (5) economic stimulation and development;
- (6) enhancement of property values;
- (7) enhancement of employment opportunities;
- (8) improvement of building resilience.**

* **Sec. 20.** AS 29.55.150 is amended to read:

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

* **Sec. 21.** AS 29.55.160 is amended by adding a new paragraph to read:

- (3) "finance" and "financing" include refinancing an existing project.

* **Sec. 22.** AS 29.55.165 is amended to read:

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

* **Sec. 23.** AS 29.55.105(d)(1) and 29.55.105(h) are repealed.

* **Sec. 24.** AS 29.10.200(64); AS 29.35.200(b)(6), 29.35.210(a)(14), 29.35.210(b)(6); AS 29.55.100, 29.55.105, 29.55.110, 29.55.115, 29.55.120, 29.55.125, 29.55.130, 29.55.135, 29.55.140, 29.55.145, 29.55.150, 29.55.155, 29.55.160, and 29.55.165 are repealed.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: CONTINUED SERVICING OF WRITTEN CONTRACTS. A municipality that has established an energy and resilience improvement assessment program under AS 29.55.100 - 29.55.165 before June 30, 2052, shall continue to service a written contract made under the energy and resilience improvement assessment program through the

1 remainder of the contract. However, a property owner and a lender may convert a written
2 contract made under the energy and resilience improvement assessment program to a loan if
3 both parties agree to the conversion.

4 * **Sec. 26.** Sections 24 and 25 of this Act take effect June 30, 2052.

5 * **Sec. 27.** Except as provided in sec. 26 of this Act, this Act takes effect immediately under
6 AS 01.10.070(c).