

HB

118

<TARGET><BILL>HB 118</BILL><SUBJECT>HB
118</SUBJECT><COMM>HENE29</COMM></TARGET>

TABLE OF CONTENTS

1. HB 118 - PACE Legislation Steele.pdf
2. HB 118 AEA Graphic.pdf
3. HB 118 Sectional Analysis for CS HB 118 Fin version P.pdf
4. HB 118 Explanation of changes HB 118 version E to version P.pdf
5. HB 118 CS WORKDRAFT FIN vP 4-5-16.pdf
6. HB 118 4.2.15 Leg. Legal memo outlining issues with H-CRA version of HB 118.pdf
7. PACE Letter of Support HB118.pdf
8. HB 118 Supporting Document BOSCO letter.pdf
9. HB 118 Supporting Documents- Letter AKHLA.pdf
10. HB 118 Supporting Documents- North Pole City Council Resolution.pdf
11. HB 118 Supporting Documents- Letter Alaska State Chamber.pdf
12. HB 118 PP PACE HFIN 04.07.15.pdf
13. HB118 Supporting Documents-Letter Mayor Hopkins FNSB 3-10-2015.pdf
14. HB118 Supporting Documents-Letter Mayor Eberheart Fairbanks.pdf

15. [HB118 Supporting Documents-Letter IGU.pdf](#)
16. [HB118 Supporting Documents-Letter Alaska Bankers Association 3-16-2015.pdf](#)
17. [HB118 Supporting Documents-Letter AK Municipal League 3-27-2015- HB.pdf](#)
18. [HB118 Supporting Document-Letter REAP 2-26-2015.pdf](#)
19. [HB118 Sponsor Statement.pdf](#)
20. [HB118 Sectional Analysis for CS HB 118 CRA.pdf](#)
21. [CSHB 118, Version H.pdf](#)
22. [REAP Support PACE Financing, HB 118.pdf](#)
23. [Mayor Hopkins FNSB.pdf](#)
24. [Mayor Eberhart City of Fairbanks.pdf](#)
25. [HCS HB 118 \(ENE\) Sectional Analysis.pdf](#)
26. [HCS HB 118 \(ENE\) Hearing Request Letter.pdf](#)
27. [HB0118B.PDF](#)
28. [HB0118-1-2-021815-CED-N.PDF](#)
29. [HB 118, Supporting Document - Alaska Bankers Association.pdf](#)
30. [HB 118, PACE HCRA 03 26 15.pdf](#)

31. [15 3 4 IGU Supports PACE Act.pdf](#)
32. [HB 118 Proposed CS ver. W.pdf](#)
33. [HB 118 Compare 29-GH1021 A and 29-GH1021 W.pdf](#)
34. [HB 118 - Leg Legal Memo 15-197.dla.pdf](#)
35. [HB 118 Supporting Documents - Letter IGU 3-4-15.pdf](#)
36. [HB 118 Supporting Documents - Letter REAP 2-26-2015.pdf](#)
37. [HB 118 AEA Presentation 3-5-2015 - PACE House Energy.pdf](#)
38. [HB 118A.pdf](#)
39. [HB 118 Supporting Documents - Letter FNSB.pdf](#)
40. [HB 118 Supporting Documents - Letter Doyon Limited.pdf](#)
41. [HB 118 Supporting Documents - Letter DEC.pdf](#)
42. [HB 118 Supporting Documents - Hearing Request AEA 2-19-2015.pdf](#)
43. [HB 118 Governor's Transmittal Letter.pdf](#)
44. [HB 118 Sectional Analysis.pdf](#)
45. [HB 118 Fiscal Note - HB0118-1-2-021815-CED-N.pdf](#)

From: [Sen. Anna MacKinnon](#)
To: [Senate Finance Committee](#)
Subject: FW: HB 118 - PACE Legislation
Date: Friday, April 15, 2016 11:21:43 AM
Attachments: [2015-10-09_12-10-53.png](#)

From: Sam Steele [mailto:samsteele@ak.net]
Sent: Friday, April 15, 2016 11:17 AM
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Subject: HB 118 - PACE Legislation

Dear Members of Senate Finance Committee,

I would like offer my support behind the PACE (Property Assessed Clean Energy Act) legislation bill.

After hearing from the Alaska Energy Authority last week at a meeting here at our firm, I wholeheartedly believe that this is a great tool for our statewide businesses and municipalities to embrace and implement energy conservation measures in its various forms.

I hope and encourage you that your vote to be in favor of HB 118.

Sincerely,

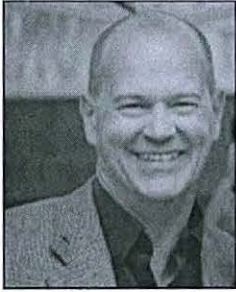
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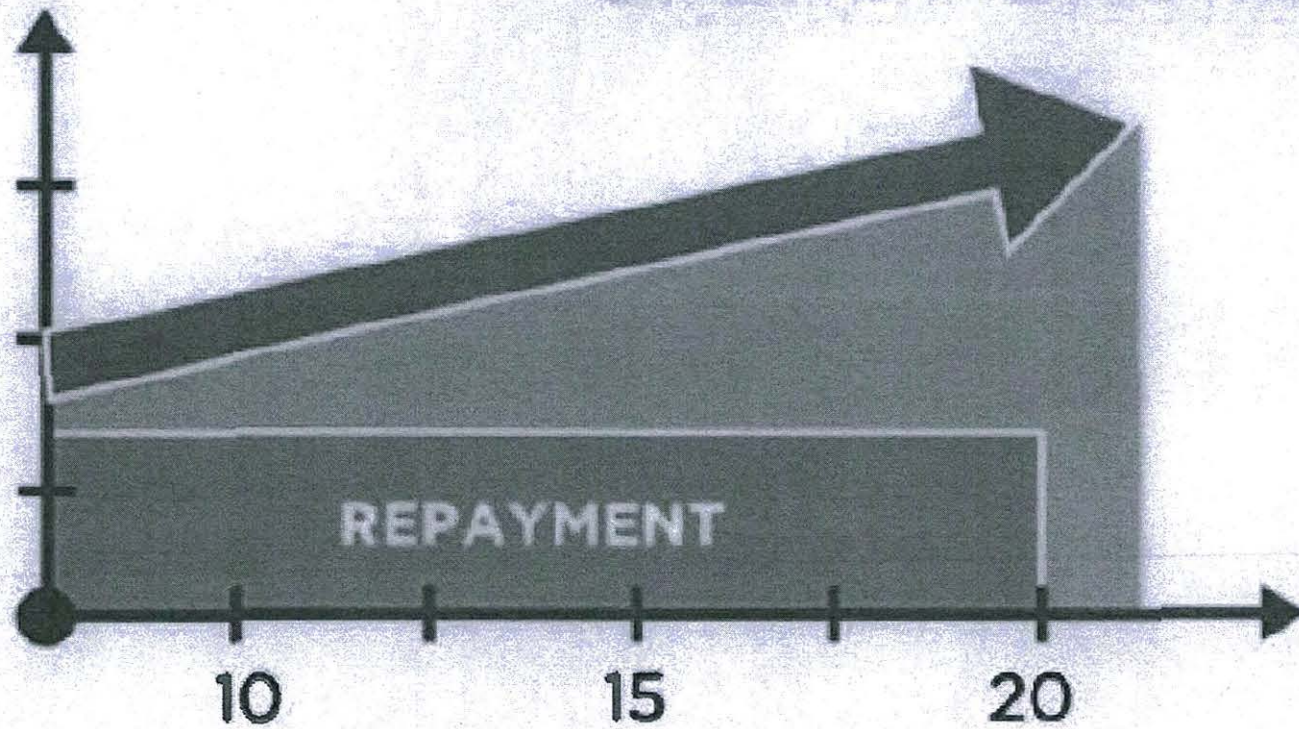


"The single biggest problem in communication is the illusion it has taken place"
- George Bernard Shaw

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ENERGY SAVINGS



DISTRIBUTED BY ALASKA ENERGY AUTHORITY
HB 118



CS House Bill 118 Fin version P - Muni Energy Improvement Assessments/Bonds

DETAILED SECTIONAL ANALYSIS

- Section 1: Amends existing AS 29.10.200 to add PACE financing to the list of items that Home Rule municipalities are allowed engage in.
- Section 2: Amends AS 29.35.200(b) to add PACE financing to the list of items that first class boroughs are allowed to engage in on an areawide basis.
- Section 3: Amends AS 29.35.210(a) to add PACE financing to the list of items that second class boroughs are allowed to engage in on a non-areawide basis.
- Section 4: Amends AS 29.35.210(b) to add PACE financing to the list of items that second class boroughs are allowed to engage in on an area wide basis.
- Section 5: 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 devises 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

CS House Bill 118 CRA Sectional Analysis

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 Applicability of Program, allows municipalities to implement PACE on an area wide or non areawide basis if they choose to participate in the program. Designated areas within a municipality 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 program 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 an ordinance establishing and defining the terms of the program, including:
 - each item included in the report under AS 29.49.070;
 - 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 proposed program boundaries;

CS House Bill 118 CRA Sectional Analysis

- A form contract between the municipality and property owner that specifies the terms of the assessment and either the third-party or municipal financing;
- A form contract, if third-party financing is used, that must be included regarding the servicing of the debt through assessments;
- A description of projects that qualify and a plan for ensuring sufficient capital for third-party financing;
- If municipal revenue bond financing is proposed:
 - 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 voluntary assessment and collection process;
- A statement describing the lender notice requirement of 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.

CS House Bill 118 CRA Sectional Analysis

- 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 a 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. 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.

CS House Bill 118 CRA Sectional Analysis

- Sec. 29.49.140, Bonds or Notes, authorizes a municipality to issue bonds or notes to finance qualified projects. Bonds for this purpose MAY NOT be general obligation bonds of the municipality.
 - 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. 29.49.890, Allows the proposed PACE provisions to be available to home rule and general law municipalities.

CS House Bill 118 CRA Sectional Analysis

- Sec. 29.49.900, Definitions for terminology included in the chapter.
- Sec. 29.49.995, Short Title, indicates this chapter may be cited as the Municipal Property Assesse Clean Energy Act.

Section 5: Sets an immediate effective date.



EXPLANATION OF CHANGES

House Bill 118

An Act adopting the Municipal Property Assessed Clean Energy Act *CS HB 118 (CRA) version E to CS HB 118 (FIN) version P*

Sec 1: No change

Sec 2: No change

Sec 3: New section allowing second class boroughs to authorize PACE financing under non areawide powers

Sec 4: Renumbered section with no change

Sec 5: Renumbered section with the following changes:

Page 3, line 17

Modifies language to allow PACE financing to be implemented within a region of a municipality determined by the municipality through a public process.

Page 3, lines 30 – 31

Modifies language to allow PACE financing to be implemented within a region of a municipality determined by the municipality through a public process.

Page 4, line 24 through Page 5, line 3

Replaces proposed AS 29.49.050 with language that allows a municipality wishing to authorize PACE financing to do so by designating an area of the municipality as a region for the program. The area designated may include the entire municipality, a single subset, or subsets of the municipality. However, the entire PACE program must be contained within the boundary of the municipality.

Page 5, line 15

Requires a municipality proposing to implement PACE financing to provide a description of the boundaries for the proposed program.

Re-letter the remaining subsections of AS 29.49.060 with no change.

Page 6, line 17

Requires that a map of the proposed PACE financing program boundary be included in the mandatory report that must be made available to the public before a PACE program can be initiated.

Renumber the remaining subsections of proposed AS 29.49.070 with no change

Page 10, lines 9 – 10

Adds language to acknowledge that PACE assessment payments may come in from regions within the municipality.

Page 11, line 7, Page 11, line 10 and Page 11, line 13

Clarifies that the prohibited acts established in proposed AS 29.49.160 will apply to a PACE financing program whether it is offered in a portion of the municipality or the entire municipality.

CS FOR HOUSE BILL NO. 118(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE 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 29.35.200(b) is amended to read:

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

11 (1) provide transportation systems;

12 (2) provide water pollution control;

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

14 (4) license day care facilities;

- 1 (5) license, impound, and dispose of animals;
- 2 **(6) establish an energy improvement assessment program under**
- 3 **AS 29.49.**
- 4 * **Sec. 3.** AS 29.35.210(a) is amended to read:
- 5 (a) A second class borough may by ordinance exercise the following powers
- 6 on a nonareawide basis:
- 7 (1) provide transportation systems;
- 8 (2) regulate the offering for sale, exposure for sale, sale, use, or
- 9 explosion of fireworks;
- 10 (3) license, impound, and dispose of animals;
- 11 (4) subject to AS 29.35.050, provide garbage, solid waste, and septic
- 12 waste collection and disposal;
- 13 (5) provide air pollution control under AS 46.14.400;
- 14 (6) provide water pollution control;
- 15 (7) participate in federal or state loan programs for housing
- 16 rehabilitation and improvement for energy conservation;
- 17 (8) provide for economic development;
- 18 (9) provide for the acquisition and construction of local service roads
- 19 and trails under AS 19.30.111 - 19.30.251;
- 20 (10) establish an emergency services communications center under
- 21 AS 29.35.130;
- 22 (11) subject to AS 28.01.010, regulate the licensing and operation of
- 23 motor vehicles and operators;
- 24 (12) engage in activities authorized under AS 29.47.460;
- 25 (13) contain, clean up, or prevent a release or threatened release of oil
- 26 or a hazardous substance, and exercise a power granted to a municipality under
- 27 AS 46.04, AS 46.08, or AS 46.09; the borough shall exercise its authority under this
- 28 paragraph in a manner that is consistent with a regional master plan prepared by the
- 29 Department of Environmental Conservation under AS 46.04.210;
- 30 **(14) establish an energy improvement assessment program under**
- 31 **AS 29.49.**

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

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

4 (1) provide transportation systems;

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

6 (3) provide air pollution control under AS 46.14.400;

7 (4) provide water pollution control;

8 (5) license day care facilities;

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

10 **AS 29.49.**

11 * **Sec. 5.** AS 29 is amended by adding a new chapter to read:

12 **Chapter 49. Municipal Property Assessed Clean Energy Act.**

13 **Sec. 29.49.010. Exercise of powers.** A municipality that establishes a program
14 under AS 29.49.060 may exercise powers granted under this chapter.

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

18 (b) An assessment under this chapter may not be imposed to repay the
19 financing 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 real property.

24 **Sec. 29.49.030. Written contract for assessment required.** A municipality
25 may impose an assessment under this chapter only under a written contract with the
26 record owner of the real property assessed.

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

29 (b) A municipality that establishes a program under this chapter may enter into
30 a written contract with a record owner of real property in a region designated under
31 this chapter to impose an assessment to repay the financing of a qualified project on

1 property of the owner. The financing repaid through assessments may be provided by
2 a third party or, if authorized by municipal ordinance, by the municipality.

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

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

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

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

14 (2) permit fees;

15 (3) inspection fees;

16 (4) lender's fees;

17 (5) program application and administrative fees;

18 (6) project development and engineering fees;

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

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

24 **Sec. 29.49.050. Designation of region.** (a) The governing body of a
25 municipality may designate an area of the municipality as a region where a record
26 owner of real property in the region may enter into a written contract to impose an
27 assessment to repay the financing of a qualified project by the owner on the owner's
28 property and, if authorized by the municipality program, finance the qualified project.

29 (b) An area designated as a region by the governing body of a municipality
30 under this section

31 (1) may include the entire municipality; and

- 1 (2) must be located wholly within the municipality's jurisdiction.
- 2 (c) A municipality may designate more than one region. If multiple regions
3 are designated, the regions may be separate, overlapping, or coterminous.
- 4 **Sec. 29.49.060. Procedure for establishment of program.** (a) To establish a
5 program under this chapter, the governing body of a municipality shall take the
6 following actions in the following order:
- 7 (1) adopt a resolution of intent that includes
- 8 (A) a finding that financing qualified projects through
9 contractual assessments serves a valid public purpose;
- 10 (B) a statement that the municipality intends to allow property
11 owners to make contractual assessments to repay financing for qualified
12 projects;
- 13 (C) a description of qualified projects that may be subject to
14 contractual assessments;
- 15 (D) a description of the boundaries of the region;
- 16 (E) a description of any proposed arrangements to make third-
17 party financing available or any financing the municipality will provide for
18 qualified projects;
- 19 (F) a description of municipal debt servicing procedures for
20 any third-party financing and assessments;
- 21 (G) a notice of the report on the proposed program required
22 under AS 29.49.070 and the location where the report is available for public
23 inspection;
- 24 (H) the time and place for a public hearing on the proposed
25 program; and
- 26 (I) the name of the local official who administers the program
27 and the appropriate assessor or person who collects the proposed contractual
28 assessments with property taxes imposed on the assessed property;
- 29 (2) hold a public hearing at which the public may comment on the
30 proposed program and the report prepared under AS 29.49.070; and
- 31 (3) adopt an ordinance establishing the program and the terms of the

1 program, including each item included in the report required under AS 29.49.070,
2 which may be incorporated by reference.

3 (b) A municipality may

4 (1) hire and set the compensation of a program administrator and
5 program staff; or

6 (2) contract for professional services necessary to administer a
7 program.

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

10 (1) program application fee paid by the property owner applying to the
11 program;

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

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

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

17 (1) a map showing the boundaries of the proposed region;

18 (2) a form for a contract between the municipality and the property
19 owner specifying the terms of

20 (A) assessment under the program; and

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

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

26 (4) a description of projects that may qualify for contractual
27 assessments;

28 (5) a plan for ensuring sufficient capital for third-party financing and,
29 if appropriate, raising capital for municipal financing for qualified projects;

30 (6) if bonds will be issued to provide capital to finance qualified
31 projects as part of the program as provided by AS 29.49.140,

- 1 (A) a maximum aggregate annual dollar amount for municipal
2 financing repaid by contractual assessments under the program;
- 3 (B) if requests appear likely to exceed the authorization
4 amount, a priority order for ranking a property owner's application for
5 financing repaid by contractual assessments; and
- 6 (C) a formula for calculating
- 7 (i) the interest rate and period during which contracting
8 owners would pay an assessment; and
- 9 (ii) the maximum amount of an assessment;
- 10 (7) a method for ensuring that the period of the contractual assessment
11 does not exceed the useful life of the qualified project that is the basis for the
12 assessment;
- 13 (8) a description of the application process and eligibility requirements
14 for financing of qualified projects repaid by contractual assessments under the
15 program;
- 16 (9) a method under (b) of this section for a property owner applying to
17 participate in the program to demonstrate the property owner's ability to fulfill
18 financial obligations repaid by contractual assessments;
- 19 (10) a statement explaining the manner in which property will be
20 assessed and assessments will be collected;
- 21 (11) a statement explaining the lender notice requirement under
22 AS 29.49.080;
- 23 (12) a statement explaining the review requirement under
24 AS 29.49.090;
- 25 (13) a description of marketing and participant education services to be
26 provided for the program;
- 27 (14) a description of quality assurance and antifraud measures to be
28 instituted for the program; and
- 29 (15) the procedures for collecting the proposed contractual
30 assessments.
- 31 (b) The municipality shall establish a method by which a property owner shall

1 demonstrate financial ability based on appropriate underwriting factors, including

2 (1) verification that the property owner applying to participate in the
3 program is

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) After a qualified project is completed, the municipality shall obtain
27 verification that the qualified project was properly completed and is operating as
28 intended.

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

31 **Sec. 29.49.100. 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 installation or modification of a qualified improvement; and

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

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

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

12 (1) the amount of the assessment;

13 (2) the legal description of the property;

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

15 (4) a reference to the statutory assessment lien provided under this
16 chapter.

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

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

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

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

30 **Sec. 29.49.130. Collection of assessments.** The governing body of a
31 municipality may contract with the governing body of another taxing unit to perform

1 the duties of the municipality relating to collection of assessments imposed by the
2 municipality under this chapter.

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

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

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

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

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

16 (4) any other funds lawfully available for purposes consistent with this
17 chapter.

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

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

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

26 (2) reduction of energy costs;

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

28 (4) economic stimulation and development;

29 (5) enhancement of property values; and

30 (6) enhancement of employment opportunities.

31 **Sec. 29.49.150. Joint implementation.** (a) Any combination of municipalities

1 may agree to jointly implement or administer a program under this chapter.

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

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

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

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

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

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

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

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

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

24 (3) "qualified project" means the installation or modification of a
25 qualified improvement;

26 (4) "real property" means privately owned commercial or industrial
27 real property;

28 (5) "region" means a region designated under this chapter.

29 **Sec. 29.49.995. Short title.** This chapter may be cited as the Municipal
30 Property Assessed Clean Energy Act.

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

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 2, 2015

SUBJECT: Amendments regarding areawide v. nonareawide power
(CSHB 118(CRA); Work Order No. 29-GH1021\E)

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

FROM: Susie L. Shutts
Legislative Counsel

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

I want to bring to your attention that the amendments incorporated into CSHB 118(CRA) that were adopted by the committee conflict.

Amendment H.1 adds establishment of an energy improvement assessment program under AS 29.49 to the list of powers that a first class borough and second class borough may exercise on an areawide basis.

The second amendment amends AS 29.49.050 so that a borough may establish a program under AS 29.49 on an areawide basis only. But the second amendment also provides that a city within a borough can opt out or opt back into a program established in the borough under AS 29.49, permits a city to establish a program under AS 29.49, which must be applied on a citywide basis, and states that if a borough establishes a program under AS 29.49 after a city within the borough establishes a program under AS 29.49, then the borough succeeds to all rights, powers, duties, assets, and liabilities of the city existing under the city's program.

If a city "opts out" of a program that is established by a borough on an areawide basis, then the borough will only be exercising its authority to establish a program on a nonareawide basis. "Nonareawide" means "throughout the area of a borough outside all cities in the borough."¹ A power that is exercised by a borough on a nonareawide basis is exercised throughout the borough, except for within cities that are within the borough. "Areawide" means "throughout a borough, both inside and outside all cities in the

¹ AS 29.71.800(14).

Representative Cathy Tilton
April 2, 2015
Page 2

borough."² A power that is exercised by a borough on an areawide basis is exercised throughout the entire borough, including within cities that are within the borough.

It is contradictory to both require that a borough exercise its authority only on an areawide basis and allow a city to opt out, leaving the borough the ability to exercise its authority only on a nonareawide basis. I have therefore made the inconsistent provisions notwithstanding the other contrary provisions in the bill. You may, however, wish to review the amendment as incorporated into the CS to determine whether the result is as the committee intended.

In addition, under AS 29.35.250, a city inside a borough may exercise any power that is not otherwise prohibited by law, but, when a borough adopts an ordinance to exercise a power on an areawide basis a city may not exercise the power "unless the borough ordinance provides otherwise or the borough by ordinance ceases to exercise the power." Under AS 29.35.340(a), once a first or second class borough acquires an areawide power, the first or second class borough "succeeds to all of the rights, powers, and duties of any city or service area with respect to that power." Once a first or second class borough acquires an additional areawide power, the borough must, "in consultation with the city or service area personnel [. . .] arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties, and other matters related to acquisition of the areawide powers." However, this committee substitute does not allow for the possibility of a city to provide an energy improvement assessment program under AS 29.49 even if a borough ordinance permitted a city to provide a program under this chapter.

SLS:lnd
15-307.lnd

Enclosure

² AS 29.71.800(1).



Municipality of Anchorage

Office of the Mayor

Ethan Berkowitz, Mayor

April 5, 2016

Representative Mark Neuman
State Capitol, Room 505
Juneau, Alaska 99801

Representative Steve Thompson
State Capitol, Room 515
Juneau, Alaska 99801

Dear Co-Chairs Neuman and Thompson,

I write in support of House Bill 118, adopting the Municipal Property Assessed Clean Energy (PACE) Act, which allows commercial property owners to finance qualifying energy efficiency improvements - through voluntary property tax assessments.

PACE legislation opens the door for local governments to foster economic growth and supports local economies through partnerships with banks and contractors. We have identified \$19 million in savings from potential building upgrades within the Municipality of Anchorage. HB 118 requires zero state funds to implement and participation is voluntary.

PACE is a proven piece of legislation, passed in thirty-five other states.

Sincerely,

Ethan Berkowitz

April 8, 2015



Emily Ford
Energy Policy and Outreach Manager
Alaska Energy Authority
813 W Northern Lights Blvd, Anchorage, AK 99503
Phone: 907-771-3961

eford@aidea.org

RE: Support for HB 118 - Property Assessed Clean Energy Act and SB56

My work insulating and replacing lights in buildings I own had a quick payback. There were immediate benefits in terms of efficient use of the buildings and 4-5 year paybacks in the direct costs. I have been fortunate that my small business was able to pay for this work out-of-pocket. Many small businesses (and that's most businesses in Alaska), don't have the cash flow to take advantage of the tremendous benefits of modern lights and insulation. Anything that can help with that is good for business and good for Alaska.

There are some energy efficiency projects that have long payback times that may exceed the time a small business is likely to own a building. The feature of this act that ties the reimbursement to the building instead of the owner should encourage property owners to get more ambitious in the efficiency projects they pursue.

The PACE routine would be a nice tool for any city that wants to encourage energy efficiency.

Thank you,

John Weddleton
President





April 6, 2015

The Honorable Steve Thompson, Co-Chair
The Honorable Mark Neuman, Co-Chair
House Finance Committee
Alaska State Capitol
Juneau, AK 99801-1182

RE: Support for HB 118 - Municipal Energy Improvement Assessments/Bonds

Dear Representatives Thompson and Neuman:

The Alaska Hotel and Lodging Association is the leading voice and resource for Alaska's lodging industry, providing jobs to 12,000 Alaskans and investing millions in infrastructure each year.

Hotel and lodging businesses are major consumers of energy, and the threat of rising energy costs risk our industry's long-term viability. AKHLA supports the Governor and Legislature in their effort to advance policies leading to the long-term reduction and stabilization of energy costs, and appreciates the introduction of HB 118.

We view the property-assessed clean energy (PACE) model as an innovative mechanism for financing energy efficiency and renewable energy improvements on our private properties. In local jurisdictions that chose to participate, HB 118 would allow hotel properties, large and small alike, to implement such improvements without having to make large, upfront cash payments. This would help eliminate a key disincentive to investing in energy improvements resulting in savings over time.

Passage of this legislation will help move our industry and Alaska's economy forward, and we urge you to take action and pass HB 118 this legislative session.

Sincerely,

Alicia Maltby, Executive Director
Alaska Hotel & Lodging Association

330 E. 4th Avenue, Suite 201 – Anchorage, AK 99501
Tel: (907) 272-1229 * Fax: (907) 272-1289 * Email: akhla@4aha.org

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CITY OF NORTH POLE

RESOLUTION 15-10

A RESOLUTION OF THE NORTH POLE CITY COUNCIL SUPPORTING HOUSE BILL 118 AND SENATE BILL 56 "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"

WHEREAS, HB 118 and SB 56 was introduced by Governor Walker to create the Property Assessed Clean Energy (PACE) program to help Alaska businesses finance retrofits on their buildings to make them more energy efficient; and

WHEREAS, assessed clean energy programs allow property owners to finance qualifying energy efficiency improvements overtime through a voluntary assessment on the property tax bill; and

WHEREAS, implementation of the PACE program is voluntary by municipalities and commercial property owners; and

WHEREAS, mortgage holder consent is required before applications are approved and assessments are placed; and

WHEREAS, improvements can include lighting upgrades, renewable energy, conversion to natural gas, high-efficiency boilers, and additional energy efficiency improvements; and

WHEREAS, the repayment obligation transfers with the sale of property; and

WHEREAS, PACE programs were named one of the top 20 "world-changing ideas by Scientific American magazine"; and

WHEREAS, energy efficiency upgrades are financed with capital secured by a primary lien on the property, lower-interest capital and favorable repayment terms that can be raised from the private sector; and

WHEREAS, PACE allows for longer repayment periods allowing the building owner to recognize immediate operating savings while repaying the debt; and

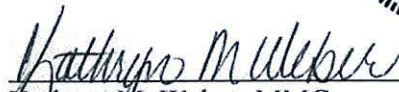
WHEREAS, PACE can use traditional lending sources; and

WHEREAS, PACE Programs in Alaska, provide consistency with state energy policy, energy efficiency and renewable energy goals; and


35 **WHEREAS**, 31 states have authorized PACE programs; and
36 **WHEREAS**, the Alaska State Legislature must provide authority for local governments
37 to establish and operate commercial PACE programs; and
38 **WHEREAS**, in the State of Alaska there are 24 eligible local governments with a total
39 population of 639,314; and
40 **WHEREAS**, Improvements may not be made to vacant lots or property undergoing
41 development at the time of assessment; and
42 **WHEREAS**, PACE programs may not be used to finance the purchase of temporary
43 products or anything not permanently fixed to real property
44
45 **NOW THEREFORE BE IT RESOLVED**, that the North Pole City Council supports
46 implementation of House Bill 118 and Senate Bill 56.
47 **PASSED AND APPROVED** by a duly constituted quorum of the North Pole City
48 Council this 16th day of March, 2015.

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ATTEST:


Kathryn M. Weber, MMC
North Pole City Clerk




Bryce J. Ward, Mayor

PASSED/FAILED Yes: 6-McCarthy, Smith, Holm, Hunter, Welch, Ward No: 0 Absent: 1 - McGhee



ALASKA CHAMBER

April 6, 2015

The Honorable Mark Neuman
Co-Chair, House Finance Committee
State Capitol, Room 505
Juneau, AK 99801

The Honorable Steve Thompson
Co-Chair, House Finance Committee
State Capitol, Room 515
Juneau, AK 99801

Re: HB 118 - An Act adopting the Municipal Property Assessed Clean Energy Act

Dear Co-Chairs Neuman and Thompson:

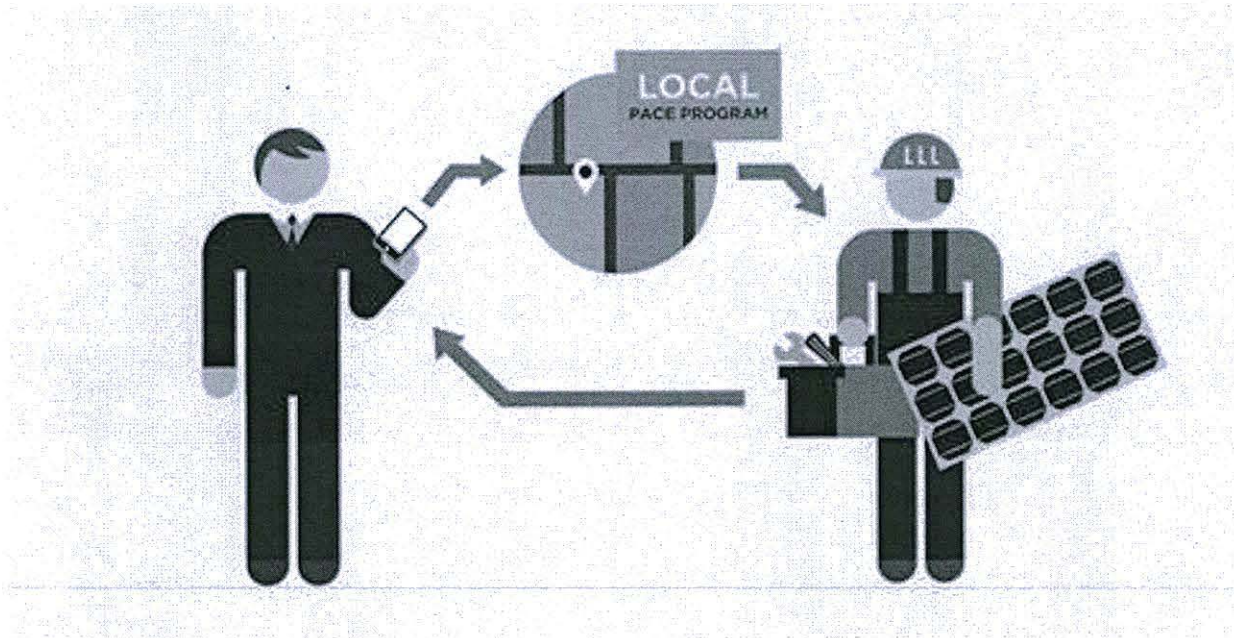
The Alaska Chamber is an organization dedicated to improving the business environment in Alaska. The Chamber represents hundreds of businesses from Ketchikan to Barrow that share a common goal: to make Alaska a viable and competitive place to do business.

The Alaska Chamber is not opposed to HB 118 in its current form, which allows municipalities the option to establish a commercial Property Assessed Clean Energy (PACE) program. As the bill moves forward, it is important that the provisions that protect Alaskans from municipalities forcing energy efficiency standards onto property owners through a PACE program remain intact.

On behalf of Alaska's business community, thank you for your efforts to promote a positive business environment.

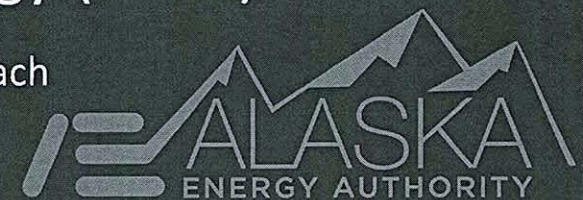
Sincerely,

Rachael Petro
President and CEO



HB 118 Property Assessed Clean Energy (PACE)

Gene Therriault, director of energy policy and outreach
Emily Ford, energy policy and outreach manager
House Finance Committee
April 7, 2015



What is Commercial PACE?

- PACE was named one of the top 20 “world-changing ideas by Scientific American magazine.”
- Commercial Property Assessed Clean Energy programs (PACE) allows commercial property owners to finance qualifying energy efficiency improvements over time through a voluntary assessment on the property tax bill.
 - Voluntary participation by municipalities AND commercial property owners
 - Mortgage holder consent is required before applications are approved and assessments are placed
 - Improvements can include lighting upgrades, renewable energy, conversion to natural gas, high-efficiency boilers, and additional energy efficiency improvements
- The repayment obligation transfers with the sale of property

Benefits

- Energy efficiency upgrades are financed with capital secured by a primary lien on the property, lower-interest capital and favorable repayment terms can be raised from the private sector
- Allows for longer repayment periods allowing the building owner to recognize immediate operating savings while repaying the debt
- Can use traditional lending sources
- In Alaska, provides consistency with state energy policy, energy efficiency and renewable energy goals

Creating a PACE Program

- 31 states have authorized PACE programs
- State legislatures must provide authority for local governments to establish and operate commercial PACE programs
- Municipalities to create the program and select financing models
- Resources: U.S. Department of Energy, PaceNow.org, C-Pace.com

Potential PACE Models

- Local-government driven
 - Either property assessment office or a PACE office used as interface with commercial property owners and potential lenders
 - Bond financing
- Private-sector driven
 - Third-party administrator under contract with local government
 - Private financing
- Hybrid model
 - Smaller local governments can contract with other communities or regional organizations to administer the program
 - Identify all potential funding sources (bonds, revolving loan funds, private capital)

House Bill 118

- HB 118: Muni Energy Improvement Assessments/Bonds
- Authorizing legislation for local governments who collect property taxes to choose to create a PACE program and allow commercial property owners to opt-in
- 24 eligible local governments with a total population of 639,314

House Bill 118

- Section 1: Amends existing AS 29.10.200 to add PACE financing to the list of items that Home Rule Municipalities are allowed to engage in
- Section 2: Amends AS 29.35.200 (b) to add PACE financing to the list of items that first class boroughs are allowed to engage in, on an area-wide basis.
- Section 3: Amends AS 29.35.210 (b) to add PACE financing to the list of items that second class boroughs are allowed to engage in, on an area-wide basis.
- Section 4 amends AS 29 by adding a new chapter:
AS 29.49: Municipal Property Assessed Clean Energy Act

House Bill 118

- AS 29.49.010 Exercise of Powers allows municipalities to exercise powers under AS 29.40.060 (Judicial Review)
- AS 29.49.020 Authorized Assessments would allow for a property tax assessment to be added for financing of qualified projects on real property.
 - Improvements may not be made to vacant lots or property undergoing development at the time of assessment
 - Not to finance purchase of temporary products or anything not permanently fixed to real property
- AS 29.49.030 Written Contract for Assessment Required would require a written contract between the local government and record owner of the real property

House Bill 118

- AS 29.49.040 Establishes the program
 - Authorizes local government to choose to establish a commercial PACE program and enter into a contract with a property owner to impose an assessment. Financing can be provided by the municipality or a third-party.
 - If third-party financing is used, the municipality, third-party financier and real property owner must all enter into a contract
 - The assessment imposed may cover some costs for the commercial property owner, including permit and lenders fees, administration, and project development and engineering costs
- AS 29.49.050 Applicability of Program
 - If they choose to participate in the program, municipalities are required to implement PACE on an area wide basis
 - Cities within a borough are allowed to opt out of a borough program through passage of an ordinance. If previously opted-out, they can opt in at a later date through another ordinance.
 - A borough succeeds to all rights and obligations of the city program.

House Bill 118

- AS 29.49.060 Defines the Procedure to Create the Program
 - If the municipality chooses to create a PACE program the governing body of a municipality must (in order):
 - 1) Adopt a resolution of intent that
 - shows that providing the PACE program serves a valid public purpose
 - includes a statement the municipality intends to make PACE available to property owners
 - includes a description of qualified projects
 - describes the boundaries of the region
 - describes the available financing for qualified projects (i.e. bonds, local lenders, etc.)
 - describes the municipal debt servicing procedures if third-party financing is used
 - describes how the public can access the program report required by AS 29.49.070
 - Identifying the time and place for a public hearing
 - identifies public contacts regarding the collection of the proposed contractual assessments

House Bill 118

- AS 29.49.060 Defines the Procedure to Create the Program
 - The governing body of a municipality must:
 - 1) hold a public hearing with opportunity for public comment
 - 2) adopt an ordinance establishing the terms of the program, including each item included in the publicly-available program report required by AS 29.49.070
 - Each aspect of the program can only be amended after another public hearing
 - A municipality may hire and set compensation for a program administrator, staff or contract for professional services
 - A municipality may impose fees to offset the costs of administering the program, to include an application fee and/or a component of the interest rate

House Bill 118

- AS 29.49.070 Requires a Publicly-Available Program Report (as required by AS 29.49.060)
 - The report must include:
 - a map of the program region boundaries
 - a form contract between the municipality and the property owner that specifies the terms of the assessment and any financing, including third-party and municipal
 - if appropriate a form contract between the municipalities and the third-party financier regarding the servicing of the debt through assessments
 - a description of qualified projects
 - a plan for ensuring sufficient capital
 - if bonds are used the report must include:
 - a maximum aggregate annual dollar amount for financing
 - a method for ranking requests from property owners
 - a method for determining the interest rate and maximum amount of an assessment
 - a method for ensuring the repayment period does not exceed the useful life of the qualified project

House Bill 118

- AS 29.49.070 Requires a Publicly-Available Program Report (continued)
 - The report must include:
 - a description of the application process and eligibility requirements
 - a method for ensuring qualified applicants can demonstrate financial ability to fulfill financial obligations and verify the applicant is the legal owner of the property, is current on mortgage and property taxes and is not insolvent or in bankruptcy
 - an explanation of the assessment and collection process
 - an explanation of the lender notice requirement provided by AS 29.40.080
 - an explanation of the review requirement provided by AS 29.49.090
 - a description of the marketing and education services to be provided
 - a description of quality assurance and antifraud measures
 - collection procedures
 - a requirement for an appropriate ratio between the assessment and property value
 - The report must be available online and at the municipal offices

House Bill 118

- AS 29.49.080 Notice to Mortgage Holder Required
 - The holder of any mortgage lien on the property must be given written notice within 30 days before the contract is executed
 - Written consent from the mortgage lien holder must be obtained
- AS 29.49.090 Review Required
 - A third-party baseline energy audit and projected energy savings are required
 - Once a qualified project is complete, the municipality shall obtain third-party verification that the project was properly completed and operating as intended
- AS 29.49.100 Direct Acquisition by Owner
 - The property owner may be authorized to purchase directly the related equipment and materials or contract directly, including through lease, power purchase agreement or other service contract for the installation or modification of a qualified improvement

House Bill 118

- AS 29.49.110 Contractual Assessment must be Noticed
 - Written notice of each contractual assessment shall be filed by the municipality in the real property records, including the assessment amount, legal description of the property, name of each property owner and the reference to the statutory assessment lien provided under this chapter
- AS 29.49.120 Contractual Assessments and any Interest or Penalties are Primary Liens on the Property
 - exceptions are municipal tax liens and special assessments
 - enforcement provided in AS 29.45.320-470
 - contractual assessment liens stay with the land and not eliminated by foreclosure
 - penalties and interest may be added to delinquent installments, as provided in AS. 29.45.250
 - municipalities may recover cost and expenses, including attorney fees to collect a delinquent installment
- AS 29.49.130 Collection of Assessments
 - The governing body of a municipality may contract with the governing body of another taxing unit to collect assessments as outlined under this chapter

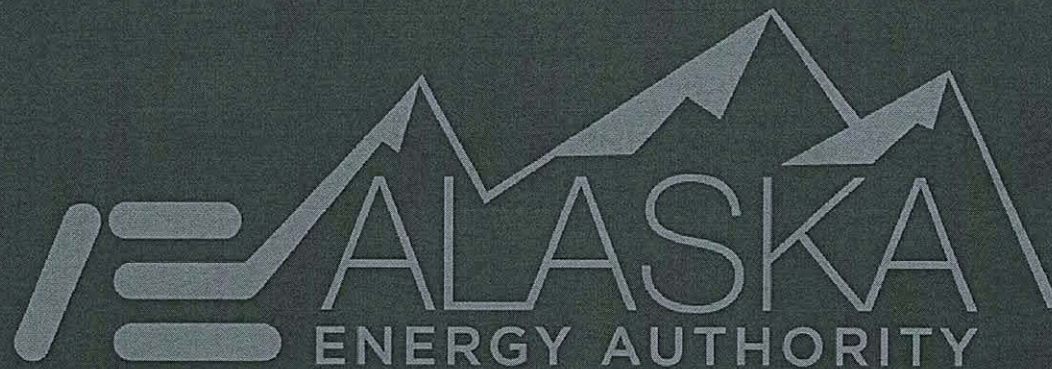
House Bill 118

- AS 29.49.140 Municipalities may Issue Bonds or Notes to Finance Qualified Projects
 - These may **not** be general obligations bonds and must be secured by one or more of the following:
 - payments of the contractual assessments
 - municipal reserves from grants, bonds, or net proceeds and other lawfully available funds
 - municipal bond insurance, lines of credit, public or private guarantees, standby bond purchase agreements, collateral assignments, mortgages, or available means of providing credit support or liquidity
 - any other funds lawfully available for purposes consistent with this chapter
 - A municipal pledge of assessments, funds, or contractual rights in connection with the issuance of bonds is a first lien valid and binding against any other person, with or without notice
 - Bonds or notes issued must further an essential public and governmental purpose, including reducing energy costs, improving electrical reliability, reduction of energy demand on utilities, economic development, employment and enhancement of property values

House Bill 118

- AS 29.49.150 Joint Implementation
 - Any combination of municipalities may agree to jointly implement or administer a program or contract with a third party. A public hearing as outlined in AS 29.49.060 is required.
- AS 29.49.160 Prohibited Acts states that the program must be voluntary
 - A municipality that establishes a PACE region may not compel a property owner to use PACE or, make any permit, license, or authorization contingent on a property owner using PACE.
- AS 29.49.890 Allows the proposed PACE provisions to be available to Home Rule and General Law Municipalities
- AS 29.49.900 Adds Definitions of Program, Qualified Improvement, Qualified Project, Real Property and Region.
- AS 29.49.995 Adds the Short Title “Municipal Property Assessed Clean Energy Act.”
- Section 5 Establishes an Immediate Effective Date

AKEnergyAuthority.org





Fairbanks North Star Borough

Mayor's Office

809 Pioneer Road P.O. Box 71267 Fairbanks, AK 99707-1267 T.(907)459-1300 F. (907)459-1102

March 10, 2015

Ms. Emily Ford
Legislative Coordinator
Alaska Energy Authority
813 W. Northern Lights Blvd.
Anchorage, AK 99503

Dear Ms. Ford

On behalf of the Fairbanks North Star Borough, I am writing to support the Property Assessed Clean Energy Act (PACE financing legislation contained in House Bill 118 and its companion, Senate Bill 56. The Fairbanks North Star Borough is the second largest municipality in the state, and faces some of the highest energy costs in the nation. Our community eagerly awaits delivery of natural gas to our city gates. When it arrives, numerous businesses-as well as home, utilities and government entities- will begin upgrading and replacing their power and heating systems. Additionally, assisting our local businesses to convert to more efficient natural gas energy will help improve our local air quality.

It is precisely for these reasons that I write in support of HB 118 and SB 56.

A well-conceived and executed Property Assessed Clean Energy (PACE) program will help Alaska businesses achieve needed energy retrofits, resulting in greater efficiencies and cost savings-all of which will make our businesses more successful and our economy more secure.

It is my understanding that similar programs in other states have resulted in reduction of energy costs, reduction of energy demand on local utilities, enhancement of property values and economic stimulation and development.

I strongly commend the concept of Property Assessed Clean Energy, and I thank the Administration for their work in bringing this idea forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Luke Hopkins".

Luke Hopkins
Mayor
Fairbanks North Star Borough



CITY OF FAIRBANKS

John Eberhart, Mayor

800 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4615

OFFICE: 907-459-6793

FAX: 907-459-6787

mayor@ci.fairbanks.ak.us

March 11, 2015

Ms. Emily Ford
Legislative Coordinator
Alaska Energy Authority
813 West Northern Lights
Anchorage, Alaska 99503

Re: Senate Bill 56 and House Bill 118 – City of Fairbanks Support

Dear Ms. Ford:

I am writing to express the City of Fairbanks' support for the proposed legislation for PACE financing as detailed in Senate Bill 56 and House Bill 1118.

In the City of Fairbanks, energy efficiency is key to the financial viability of businesses, given our current high rates for heating and fuel costs. The proposed creation of a Property Assessed Clean Energy (PACE) program to help Alaska businesses finance retrofits on their buildings to make them more energy efficient would be a boon to our local businesses. There are currently few state programs aimed at helping commercial buildings become more efficient and this legislation would create another tool to increase the energy efficiency of businesses.

PACE would give business owners the opportunity to borrow from their local tax assessment district, and then pay the loan back through an additional tax assessment on their property. The program would be revenue neutral for the municipality, and would allow the loan to be attached to the building, rather than the building's owner. PACE programs in other states provide important benefits including reduction of energy costs and enhancement of property values and economic stimulation and development.

This opportunity for local businesses in the Golden Heart community is appreciated, and I thank the Alaska Energy Authority for supporting this program. I also applaud Governor Walker for introducing this legislation to help the City of Fairbanks become more energy efficient, while also bringing operating costs into a more reasonable range of expenditure.

Please encourage your colleagues in the Senate and House of Representatives to support this legislation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Eberhart".

Mayor John Eberhart

Cc: City Council

Ms. Emily Ford
Legislative Coordinator
Alaska Energy Authority
813 West Northern Lights
Anchorage, Alaska 99503

Dear Ms. Ford,

The Interior Gas Utility is a municipal utility in the Fairbanks North Star Borough tasked by the borough and the community to deliver "low cost natural gas, to as many people possible, as quickly as possible." As part of that mission, I offer my support on behalf of the Interior Gas Utility for HB 118/SB 56.

The IGU service area incorporates the City of North Pole and areas within the FNSB surrounding the City of Fairbanks. Phase I of the project incorporates downtown North Pole and several commercial properties that would be classified as high demand users. While 40 commercial structures are anticipated to convert to natural gas in Phase I, this accounts for slightly less than 50% of the gas demand for the entire phase.

It is critical that high volume structures convert to natural gas as soon as possible to increase the demand for the project. Currently, no resources are available for commercial and multi-family structures, and the PACE Act will fill that void to assist in more rapid conversions. By the third year of natural gas availability in Phase I, 100% of commercial and 95% of multi-family homes are expected to be using natural gas as their primary heating source, a trend that is supported by the Cardno Entrix Conversions Analysis Report and ENSTAR's rate of conversion in Homer, AK.

The PACE Act eases financial roadblocks from the business community and property owners allowing them to convert to natural gas more rapidly with these financing options. Not only does this legislation provide a way for the larger users of natural gas to convert faster, it stimulates the economic wellbeing of the community, improving air quality and lowering heating costs for residents in the Interior.

It is without reservation that IGU offer to support this legislation to accomplish our mission for the benefit of the state, and specifically the FNSB community.

Sincerely,



Steven Haagenson
General Manager

PO Box 70200
Fairbanks, AK 99707

907 374 4474
interiorgas.com

Alaska Bankers Association

P.O. Box 241489 • Anchorage, Alaska 99524-1489 • T: 907-261-3525 • F: 907-562-1758

March 16, 2015

The Honorable Click Bishop, Chair
Senate Community and Regional Affairs Committee
Alaska State Capitol
Juneau, AK 99801-1182

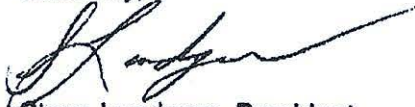
Re: Senate Bill 56 - Municipal Energy Improvement Assessments/Bonds

Dear Senator Bishop:

The Alaska Bankers Association supports economic development initiatives that lower the cost of energy and ensure adequate and reliable deliverability.

In response to the question raised by the Senate Community and Regional Affairs Committee on March 12, the Alaska Bankers Association is not opposed to Senate Bill 56 in its current form, which proposes to establish a commercial Property Assessed Clean Energy (PACE) program in Alaska that requires written consent from the lien holder.

Sincerely,



Steve Lundgren, President
Alaska Bankers Association



217 Second Street, Suite 200 • Juneau, Alaska 99801
Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

March 27, 2015

House C& RA Committee
Chair – Representative Cathy Tilton
Alaska State Capitol Building
Juneau, Alaska 99811

RE: HB 118 – Property Assessed Clean Energy Act

Dear Committee Members,

The Alaska Municipal League would like to offer our complete support to this bill. In a time of large deficits, both within the State and municipalities, which yet still finds many municipalities paying huge amount of money for traditional energy means and businesses and municipalities must have more “tools” to make our communities healthy, inviting, business friendly places in which to live.

This bill, leave the PACE program as an optional program. Municipalities that feel they cannot afford this program do not have to take part. But, those who can afford to do so, have the opportunity to create a much-better business environment. Members of AML have spent the last few years doing what we can to build a better relationship with the businesses that make our communities healthy. This also helps that mission.

Again, we would hope that your vote would be a positive vote on this legislation. Thank you for the opportunity to comment.

Sincerely,

Kathie Wasserman
Executive Director
Alaska Municipal League

Ms. Emily Ford
Legislative Coordinator
Alaska Energy Authority
813 West Northern Lights
Anchorage, Alaska 99503

February 26, 2015

Dear Ms. Ford:

On behalf of Renewable Energy Alaska Project (REAP), I am writing to support the PACE financing legislation contained in House Bill 118 and its companion, SB 56. As you know, REAP is a statewide non-profit coalition of over 80 electric utilities, independent power producers and developers, Alaska Native organizations, businesses and NGOs with the goal of increasing renewable energy development and promoting energy efficiency in Alaska.

REAP has been advocating for over two years for the creation of a Property Assessed Clean Energy (PACE) program to help Alaska businesses finance retrofits on their buildings to make them more energy efficient. There are currently few state programs aimed at helping commercial buildings become more efficient and this legislation would create another tool to increase the energy efficiency of the state's building stock.

PACE would give business owners the opportunity to *voluntarily* borrow from their local tax assessment district, and then pay the loan back through an additional tax assessment on their property. The program would be revenue neutral for the municipality, and would allow the loan to be attached to the building, rather than the buildings owner.

PACE programs in other states are already providing important benefits including reduction of energy costs, reduction of energy demand on local utilities, enhancement of property values and economic stimulation and development.

Thanks to the Alaska Energy Authority for promoting PACE, and to Governor Walker for introducing this legislation to help Alaska be more efficient, and keep energy dollars circulating in the state's economy.

Sincerely,



Chris Rose
Executive Director

House Bill 118- Muni Energy Improvement Assessments/Bonds

The Governor's transmittal letter dated February 17, 2015, follows:

Dear Speaker Chenault:

Under the authority of Article III, Section 18 of the Alaska Constitution, I am transmitting a bill relating to establishing a municipal property assessed clean energy program.

Implementing energy efficiency measures in commercial buildings offers an opportunity for owners to reduce energy consumption. This not only can reduce operating costs to the building owner, but also can reduce energy demand on local utilities and improve the reliability of local energy and electrical systems. Financing energy efficiency measures can be a substantial barrier for building owners.

The bill would empower local governments to establish property assessed clean energy programs. These local programs would enable building owners to more easily borrow money from either the municipality or a private lender to implement energy efficiency measures by making property tax assessments available to ensure repayment of the debt obligation. Municipalities may issue bonds to fund a municipal lending. Building owners would voluntarily allow the local municipality to impose a tax assessment on their property. The tax assessment would be payable annually with property taxes, with the proceeds used to repay the lender or bond holders over the full life of the loan. Because the lender or bondholder would have a more assured revenue source for loan repayment, the financing costs should be reduced. The net effect of the program is that commercial building owners will be able to more easily implement energy efficiency measures. The owners will reap benefits from reduced energy and financing costs associated with the energy efficiency improvements.

The program would be known as the Municipal Property Assessed Clean Energy Act.

I urge your prompt and favorable action on this measure.

Sincerely,
/s/
Bill Walker
Governor



CS House Bill 118 CRA - Muni Energy Improvement Assessments/Bonds

DETAILED SECTIONAL ANALYSIS

- Section 1: Amends existing AS 29.10.200 to add PACE financing to the list of items that Home Rule municipalities are allowed engage in.
- Section 2: Amends AS 29.35.200(b) to add PACE financing to the list of items that first class boroughs are allowed to engage in on an area wide basis.
- Section 3: Amends AS 29.35.210(b) to add PACE financing to the list of items that second class boroughs are allowed to engage in on an area wide basis.
- Section 4: 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.

CS House Bill 118 CRA Sectional Analysis

- Sec. 29.49.050 Applicability of Program, requires municipalities to implement PACE on an area wide basis if they choose to participate in the program. Cities within a borough are allowed to opt out of a borough program through passage of an ordinance. Cities may opt in to a borough program, by ordinance, if they previously opted out. A borough that assumes a city PACE program succeeds to all rights and obligations of the city program.
- 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 an ordinance 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;
 - 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;

CS House Bill 118 CRA Sectional Analysis

- A form contract between the municipality and property owner that specifies the terms of the assessment and either the third-party or municipal financing;
- A form contract, if third-party financing is used, that must be included regarding the servicing of the debt through assessments;
- A description of projects may qualify and a plan for ensuring sufficient capital for third-party financing;
- If municipal bond financing is used:
 - 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.

CS House Bill 118 CRA Sectional Analysis

- 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. 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.

CS House Bill 118 CRA Sectional Analysis

- 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. 29.49.890, Allows the proposed PACE provisions to be available to home rule and general law municipalities.
- Sec. 29.49.900, Definitions, defines terminology included in the chapter.

CS House Bill 118 CRA Sectional Analysis

- Sec. 29.49.995, Short Title, indicates this chapter may be cited as the Municipal Property Assesse Clean Energy Act.

Section 5: Sets an immediate effective date.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

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).

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.

1 (b) An assessment under this chapter may not be imposed to repay the
2 financing of

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

5 (2) the purchase or installation of products or devices not permanently
6 fixed to real property.

7 **Sec. 29.49.030. Written contract for assessment required.** A municipality
8 may impose an assessment under this chapter only under a written contract with the
9 record owner of the real property assessed.

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

12 (b) A municipality that establishes a program under this chapter may enter into
13 a written contract with a record owner of real property in a region designated under
14 this chapter to impose an assessment to repay the financing of a qualified project on
15 property of the owner. The financing repaid through assessments may be provided by
16 a third party or, if authorized by municipal ordinance, by the municipality.

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

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

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

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

28 (2) permit fees;

29 (3) inspection fees;

30 (4) lender's fees;

31 (5) program application and administrative fees;

- 1 (6) project development and engineering fees;
- 2 (7) third-party review fees, including verification review fees, under
- 3 AS 29.49.090; and
- 4 (8) 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. 29.49.050. Designation of region.** (a) The governing body of a

8 municipality may designate an area of the municipality as a region where a record

9 owner of real property in the region may enter into a written contract to impose an

10 assessment to repay the financing of a qualified project by the owner on the owner's

11 property and, if authorized by the municipal program, finance the qualified project.

12 (b) An area designated as a region by the governing body of a municipality

13 under this section may include the entire municipality.

14 (c) A municipality may designate more than one region. If multiple regions

15 are designated, the regions may be separate, overlapping, or coterminous.

16 **Sec. 29.49.060. Procedure for establishment of program.** (a) To establish a

17 program under this chapter, the governing body of a municipality shall take the

18 following actions in the following order:

- 19 (1) adopt a resolution of intent that includes
- 20 (A) a finding that financing qualified projects through
- 21 contractual assessments serves a valid public purpose;
- 22 (B) a statement that the municipality intends to allow property
- 23 owners to make contractual assessments to repay financing for qualified
- 24 projects;
- 25 (C) a description of qualified projects that may be subject to
- 26 contractual assessments;
- 27 (D) a description of the boundaries of the region;
- 28 (E) a description of any proposed arrangements to make third-
- 29 party financing available or any financing the municipality will provide for
- 30 qualified projects;
- 31 (F) a description of municipal debt servicing procedures for

- 1 any third-party financing and assessments;
- 2 (G) a notice of the report on the proposed program required
- 3 under AS 29.49.070 and the location where the report is available for public
- 4 inspection;
- 5 (H) the time and place for a public hearing on the proposed
- 6 program; and
- 7 (I) the names of the local official who administers the program
- 8 and the appropriate assessor or person who collects the proposed contractual
- 9 assessments with property taxes imposed on the assessed property;
- 10 (2) hold a public hearing at which the public may comment on the
- 11 proposed program and the report prepared under AS 29.49.070; and
- 12 (3) adopt an ordinance establishing the program and the terms of the
- 13 program, including each item included in the report required under AS 29.49.070,
- 14 which may be incorporated by reference.
- 15 (b) A municipality may
- 16 (1) hire and set the compensation of a program administrator and
- 17 program staff; or
- 18 (2) contract for professional services necessary to administer a
- 19 program.
- 20 (c) A municipality may impose fees to offset the costs of administering a
- 21 program. The fees authorized under this subsection may be assessed as a
- 22 (1) program application fee paid by the property owner applying to the
- 23 program;
- 24 (2) component of the interest rate on the assessment in the written
- 25 contract between the municipality and the property owner; or
- 26 (3) combination of (1) and (2) of this subsection.
- 27 **Sec. 29.49.070. Report regarding assessment program.** (a) The report for a
- 28 proposed program required by AS 29.49.060 must include
- 29 (1) a map showing the boundaries of the proposed region;
- 30 (2) a form for a contract between the municipality and the 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 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

1 assessed and assessments will be collected;

2 (11) a statement explaining the lender notice requirement under
3 AS 29.49.080;

4 (12) a statement explaining the review requirement under
5 AS 29.49.090;

6 (13) a description of marketing and participant education services to be
7 provided for the program;

8 (14) a description of quality assurance and antifraud measures to be
9 instituted for the program; and

10 (15) the procedures for collecting the proposed contractual
11 assessments.

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

14 (1) verification that the property owner applying to participate in the
15 program is

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

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

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

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

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

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

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

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

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

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

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

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

7 (b) After a qualified project is completed, the municipality shall obtain
8 verification that the qualified project was properly completed and is operating as
9 intended.

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

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

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

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

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

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

24 (1) the amount of the assessment;

25 (2) the legal description of the property;

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

27 (4) a reference to the statutory assessment lien provided under this
28 chapter.

29 **Sec. 29.49.120. Lien.** (a) Contractual assessments under this chapter and any
30 interest or penalties on the assessments are liens on the property assessed and are prior
31 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;

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

5 (3) "qualified project" means the installation or modification of a
6 qualified improvement;

7 (4) "real property" means privately owned commercial or industrial
8 real property;

9 (5) "region" means a region designated under this chapter.

10 **Sec. 29.49.995. Short title.** This chapter may be cited as the Municipal
11 Property Assessed Clean Energy Act.

12 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).



HCS HB 118(ENE) - Muni Energy Improvement Assessments/Bonds

DETAILED SECTIONAL ANALYSIS

- Section 1: Amends existing AS 29.10.200 to add PACE financing to the list of items that Home Rule municipalities are allowed engage in.
- Section 2: 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 an ordinance 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;
 - 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;
 - A form contract, if third-party financing is used, that must be included regarding the servicing of the debt through assessments;

- A description of projects may qualify and a plan for ensuring sufficient capital for third-party financing;
 - If municipal bond financing is used:
 - 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. 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. 29.49.890, Allows the proposed PACE provisions to be available to home rule and general law municipalities.
- 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 Assesse Clean Energy Act.

Section 3 sets an immediate effective date.



March 24, 2015

Representative Cathy Tilton
House Community and Regional Affairs Committee
State Capitol, Room 424
Juneau, Alaska 99801

Re: HCS HB 118(ENE)

Dear Representative Tilton:

Thank you for placing HCS HB 118(ENE)-Muni Energy Improvement Assessments/Bonds- on the House Community and Regional Affairs Committee for consideration this week.

The legislation would provide the opportunity for local governments to create a Property Assessed Clean Energy (PACE) financing mechanism. PACE would incentivize energy efficiency improvements to commercial buildings by allowing a local government financing option as part of property tax assessments.

Thirty-two other states have created similar financing structures. Under a PACE program, interested business owners first have their buildings audited to determine potential energy savings. They then apply to traditional lending sources (loan programs, local lenders, etc.) for financing that is repaid through an addition to their property tax assessment that may be in place for up to 20 years. In the Interior, the PACE financing mechanism can incentivize conversion to natural gas.

HCS HB 118(ENE) would allow local governments and businesses to opt-in on a voluntary basis to adopt PACE financing mechanisms. Lenders are provided with additional certainty of repayment while business owners are traditionally supportive because it allows them to finance improvements over an extended period of time with low-cost capital.

The House Energy Committee amended the bill during its meeting on March 17 and adopted HCS HB 118 today, March 24. AEA supports the CS as it clarifies that PACE financing could be considered by home rule and general law municipalities in Alaska that exercise property tax powers.

In addition the CS streamlines the local process to create a PACE program by requiring passage of a government resolution followed by the regular municipal ordinance process, thereby maintaining ample public notification. HCS HB 118 (ENE) also makes numerous stylistic alterations to conform to the Manual of Legislative Drafting. After conferring with the Department of Law, AEA agrees with these conforming modifications.

Finally, Legislative Legal recommends further clarification of three municipal issues that the House Energy Committee left for consideration by the House Community and Regional Affairs Committee.

These issues are:

1. is the language on Page 4, Lines 20 – 21 necessary since municipal powers adopted by ordinance can only be amended by a subsequent ordinance process with required public notice and opportunity for public input;
2. do AS 29.35.200, AS 29.35.210 and AS 29.35.220 need to be amended to clarify that all boroughs that exercise property tax powers can create PACE programs under HB 118; and
3. should the language on Page 3, Lines 16 – 17 be deleted to clarify that municipalities are not allowed to initiate PACE programs outside of their territorial jurisdiction.

AEA stands ready to work with you and your staff to address these items in the House Community and Regional Affairs Committee.

If you have any questions regarding this bill, please feel free to contact me at 771-3012, or AEA's Energy Policy and Outreach Manager, Emily Ford at 771-3961 or cell 360-2131.

Sincerely,

 For SFG

Sara Fisher-Goad
Executive Director

CS FOR HOUSE BILL NO. 118(ENE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON ENERGY

Offered: 3/25/15

Referred: Community and Regional Affairs, 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 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.

1 (b) An assessment under this chapter may not be imposed to repay the
2 financing of

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

5 (2) the purchase or installation of products or devices not permanently
6 fixed to real property.

7 **Sec. 29.49.030. Written contract for assessment required.** A municipality
8 may impose an assessment under this chapter only under a written contract with the
9 record owner of the real property assessed.

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

12 (b) A municipality that establishes a program under this chapter may enter into
13 a written contract with a record owner of real property in a region designated under
14 this chapter to impose an assessment to repay the financing of a qualified project on
15 property of the owner. The financing repaid through assessments may be provided by
16 a third party or, if authorized by municipal ordinance, by the municipality.

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

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

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

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

28 (2) permit fees;

29 (3) inspection fees;

30 (4) lender's fees;

31 (5) program application and administrative fees;

- 1 (6) project development and engineering fees;
- 2 (7) third-party review fees, including verification review fees, under
- 3 AS 29.49.090; and
- 4 (8) 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. 29.49.050. Designation of region.** (a) The governing body of a
 8 municipality may designate an area of the municipality as a region where a record
 9 owner of real property in the region may enter into a written contract to impose an
 10 assessment to repay the financing of a qualified project by the owner on the owner's
 11 property and, if authorized by the municipal program, finance the qualified project.

12 (b) An area designated as a region by the governing body of a municipality
 13 under this section

- 14 (1) may include the entire municipality; and
- 15 (2) must be located wholly within the municipality's jurisdiction.

16 (c) For purposes of determining a municipality's jurisdiction under (b)(2) of
 17 this section, the municipality's extraterritorial jurisdiction may be included.

18 (d) A municipality may designate more than one region. If multiple regions
 19 are designated, the regions may be separate, overlapping, or coterminous.

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

- 23 (1) adopt a resolution of intent that includes
 - 24 (A) a finding that financing qualified projects through
 - 25 contractual assessments serves a valid public purpose;
 - 26 (B) a statement that the municipality intends to allow property
 - 27 owners to make contractual assessments to repay financing for qualified
 - 28 projects;
 - 29 (C) a description of qualified projects that may be subject to
 - 30 contractual assessments;
 - 31 (D) a description of the boundaries of the region;

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

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

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

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

11 (I) the names of the local official who administers the program
12 and the appropriate assessor or person who collects the proposed contractual
13 assessments with property taxes imposed on the assessed property;

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

16 (3) adopt an ordinance establishing the program and the terms of the
17 program, including

18 (A) each item included in the report required under
19 AS 29.49.070, which may be incorporated by reference; and

20 (B) a description of each aspect of the program that may not be
21 amended unless another public hearing is held.

22 (b) A municipality may

23 (1) hire and set the compensation of a program administrator and
24 program staff; or

25 (2) contract for professional services necessary to administer a
26 program.

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

29 (1) program application fee paid by the property owner applying to the
30 program;

31 (2) component of the interest rate on the assessment in the written

1 contract between the municipality and the property owner; or

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

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

5 (1) a map showing the boundaries of the proposed region;

6 (2) a form for a contract between the municipality and the property
7 owner specifying the terms of

8 (A) assessment under the program; and

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

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

14 (4) a description of projects that may qualify for contractual
15 assessments;

16 (5) a plan for ensuring sufficient capital for third-party financing and,
17 if appropriate, raising capital for municipal financing for qualified projects;

18 (6) if bonds will be issued to provide capital to finance qualified
19 projects as part of the program as provided by AS 29.49.140,

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

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

25 (C) a formula for calculating

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

28 (ii) the maximum amount of an assessment;

29 (7) a method for ensuring that the period of the contractual assessment
30 does not exceed the useful life of the qualified project that is the basis for the
31 assessment;

1 (8) a description of the application process and eligibility requirements
 2 for financing of qualified projects repaid by contractual assessments under the
 3 program;

4 (9) a method under (b) of this section for a property owner applying to
 5 participate in the program to demonstrate the property owner's ability to fulfill
 6 financial obligations repaid by contractual assessments;

7 (10) a statement explaining the manner in which property will be
 8 assessed and assessments will be collected;

9 (11) a statement explaining the lender notice requirement under
 10 AS 29.49.080;

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

13 (13) a description of marketing and participant education services to be
 14 provided for the program;

15 (14) a description of quality assurance and antifraud measures to be
 16 instituted for the program; and

17 (15) the procedures for collecting the proposed contractual
 18 assessments.

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

21 (1) verification that the property owner applying to participate in the
 22 program is

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

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

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

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

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

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

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

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

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

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

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

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

14 (b) After a qualified project is completed, the municipality shall obtain
15 verification that the qualified project was properly completed and is operating as
16 intended.

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

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

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

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

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

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

31 (1) the amount of the assessment;

- 1 (2) the legal description of the property;
 2 (3) the name of each property owner; and
 3 (4) a reference to the statutory assessment lien provided under this
 4 chapter.

5 **Sec. 29.49.120. Lien.** (a) Contractual assessments under this chapter and any
 6 interest or penalties on the assessments are liens on the property assessed and are prior
 7 and paramount to all liens except municipal tax liens and special assessments.
 8 Contractual assessment liens may be enforced as provided in AS 29.45.320 -
 9 29.45.470 for enforcement of property tax liens.

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

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

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

18 **Sec. 29.49.130. Collection of assessments.** The governing body of a
 19 municipality may contract with the governing body of another taxing unit to perform
 20 the duties of the municipality relating to collection of assessments imposed by the
 21 municipality under this chapter.

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

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

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

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

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

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

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

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

- 13 (1) improvement of the reliability of local electrical systems;
- 14 (2) reduction of energy costs;
- 15 (3) reduction of energy demand on local utilities;
- 16 (4) economic stimulation and development;
- 17 (5) enhancement of property values; and
- 18 (6) enhancement of employment opportunities.

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

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

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

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

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

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

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

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

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

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

12 (3) "qualified project" means the installation or modification of a
13 qualified improvement;

14 (4) "real property" means privately owned commercial or industrial
15 real property;

16 (5) "region" means a region designated under this chapter.

17 **Sec. 29.49.995. Short title.** This chapter may be cited as the Municipal
18 Property Assessed Clean Energy Act.

19 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version:	HB 118
Fiscal Note Number:	1
(H) Publish Date:	2/18/2015

Identifier: DCCED-AEA-01-16-15
 Title: MUNI ENERGY IMPROVEMNT
 ASSESSMNTS/BONDS
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: Rules By Request of the Governor

Department: Department of Commerce, Community and
 Economic Development
 Appropriation: Alaska Energy Authority
 Allocation: Statewide Project Development, Alternative
 Energy and Efficiency
 OMB Component Number: 2888

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below.

(Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES	FY 2016	FY 2016					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues

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Estimated SUPPLEMENTAL (FY2015) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? no
 If yes, by what date are the regulations to be adopted, amended or repealed? n/a

Why this fiscal note differs from previous version:

initial version

Prepared By:	Sara Fisher-Goad, Executive Director	Phone:	(907)771-3000
Division:	Alaska Energy Authority	Date:	01/15/2015 02:30 PM
Approved By:	Catherine Reardon, Administrative Services Director	Date:	01/16/15
Agency:	Department of Commerce, Community and Economic Development		

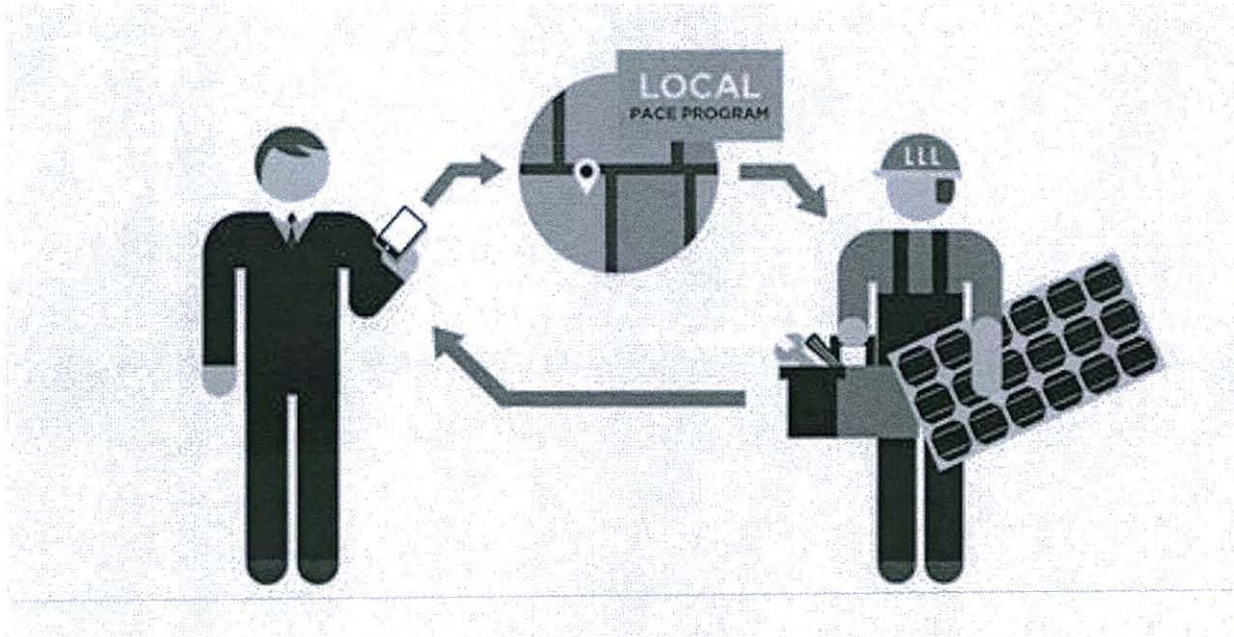
FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

Analysis

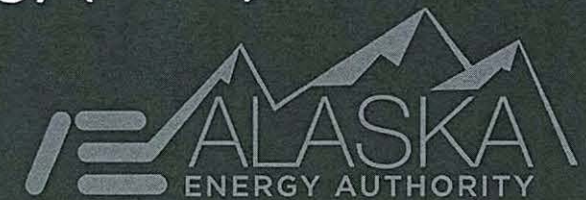
The legislation provides the opportunity for municipalities and businesses to voluntarily participate in a Municipal Assessed Clean Energy finance program. The program would allow municipalities to create a structure where businesses could finance energy efficiency upgrades to existing commercial properties (including the conversion to natural gas) through traditional lending, or a municipal sources and repay the loan through an assessment charge on the individual annual property tax assessment.

There is no fiscal impact to the Alaska Energy Authority, or the state of Alaska, with the passage of this proposed legislation.



HB 118 Property Assessed Clean Energy (PACE)

Emily Ford, energy policy and outreach manager
House Energy Committee
March 5, 2015



What is Commercial PACE?

- PACE was named one of the top 20 “world-changing ideas by Scientific American magazine.”
- Commercial Property Assessed Clean Energy programs (PACE) allows property owners to finance qualifying energy efficiency improvements over time through a voluntary assessment on the property tax bill.
 - Voluntary participation by municipalities AND commercial property owners
 - Mortgage holder consent is required before applications are approved and assessments are placed
 - Improvements can include lighting upgrades, renewable energy, conversion to natural gas, high-efficiency boilers, and additional energy efficiency improvements
- The repayment obligation transfers with the sale of property

Benefits

- Energy efficiency upgrades are financed with capital secured by a primary lien on the property, lower-interest capital and favorable repayment terms can be raised from the private sector
- Allows for longer repayment periods allowing the building owner to recognize immediate operating savings while repaying the debt
- Can use traditional lending sources
- In Alaska, provides consistency with state energy policy, energy efficiency and renewable energy goals

Creating a PACE Program

- 31 states have authorized PACE programs
- State legislatures must provide authority for local governments to establish and operate commercial PACE programs
- Municipalities to create the program and select financing models
- Resources: U.S. Department of Energy, PaceNow.org, C-Pace.com

Potential PACE Models

- Local-government driven
 - Either property assessment office or a PACE office used as interface with commercial property owners and potential lenders
 - Bond financing
- Private-sector driven
 - Third-party administrator under contract with local government
 - Private financing
- Hybrid model
 - Smaller local governments can contract with other communities or regional organizations to administer the program
 - Identify all potential funding sources (bonds, revolving loan funds, private capital)

House Bill 118

- HB 118: Muni Energy Improvement Assessments/Bonds
- Authorizing legislation for local governments who collect property taxes to choose to create a PACE program and allow commercial property owners to opt-in
- 24 eligible local governments with a total population of 639,314

House Bill 118

- Section 1: Amends existing AS 29.10.200 to add PACE financing to the list of items that Home Rule Municipalities are allowed to engage in
- Section 2 amends AS 29 by adding a new chapter:
AS 29.49: Municipal Property Assessed Clean Energy Act
- AS 29.49.010 Exercise of Powers allows municipalities to exercise powers under AS 29.40.060 (Judicial Review)
- AS 29.49.020 Authorized Assessments would allow for a property tax assessment to be added for financing of qualified projects on real property.
 - Improvements may not be made to vacant lots or property undergoing development at the time of assessment
 - Not to finance purchase of temporary products or anything not permanently fixed to real property
- AS 29.49.30 Written Contract for Assessment Required would require a written contract between the local government and record owner of the real property

House Bill 118

- AS 29.49.040 Establishes the program
 - Authorizes local government to choose to establish a PACE program and enter into a contract with a property owner to impose an assessment. Financing can be provided by the municipality or a third-party.
 - If third-party financing is used, the municipality, third-party financier and real property owner must all enter into a contract
 - The assessment imposed may cover some costs for the commercial property owner, including permit and lenders fees, administration, and project development and engineering costs
- AS 29.49.050 Designates the Eligible Region
 - The municipality's governing body may designate one or more area(s) of the municipality (within its jurisdiction) as a PACE-eligible region(s)

House Bill 118

- AS 29.49.060 Defines the Procedure to Create the Program
 - If the municipality chooses to create a PACE program the governing body of a municipality must (in order):
 - 1) Adopt a resolution of intent that
 - shows that providing the PACE program serves a valid public purpose
 - includes a statement the municipality intends to make PACE available to property owners
 - includes a description of qualified projects
 - describes the boundaries of the region
 - describes the available financing for qualified projects (i.e. bonds, local lenders, etc.)
 - describes the municipal debt servicing procedures if third-party financing is used
 - describes how the public can access the program report required by AS 29.29.070
 - Identifying the time and place for a public hearing
 - identifies public contacts regarding the collection of the proposed contractual assessments

House Bill 118

- AS 29.49.060 Defines the Procedure to Create the Program
 - The governing body of a municipality must:
 - 2) hold a public hearing with opportunity for public comment
 - 3) adopt an ordinance establishing the terms of the program, including each item included in the publicly-available program report required by AS 29.49.070
 - Each aspect of the program can only be amended after another public hearing
 - A municipality may hire and set compensation for a program administrator, staff or contract for professional services
 - A municipality may impose fees to offset the costs of administering the program, to include an application fee and/or a component of the interest rate

House Bill 118

- AS 29.49.070 Requires a Publicly-Available Program Report (as required by AS 29.49.060)
 - The report must include:
 - a map of the program region boundaries
 - a form contract between the municipality and the property owner that specifies the terms of the assessment and any financing, including third-party and municipal
 - if appropriate a form contract between the municipalities and the third-party financier regarding the servicing of the debt through assessments
 - a description of qualified projects
 - a plan for ensuring sufficient capital
 - if bonds are used the report must include:
 - a maximum aggregate annual dollar amount for financing
 - a method for ranking requests from property owners
 - a method for determining the interest rate and maximum amount of an assessment
 - a method for ensuring the repayment period does not exceed the useful life of the qualified project

House Bill 118

- AS 29.49.070 Requires a Publicly-Available Program Report (continued)
 - The report must include:
 - a description of the application process and eligibility requirements
 - a method for ensuring qualified applicants can demonstrate financial ability to fulfill financial obligations and verify the applicant is the legal owner of the property, is current on mortgage and property taxes and is not insolvent or in bankruptcy
 - an explanation of the assessment and collection process
 - an explanation of the lender notice requirement provided by AS 29.40.080
 - an explanation of the review requirement provided by AS 29.49.090
 - a description of the marketing and education services to be provided
 - a description of quality assurance and antifraud measures
 - collection procedures
 - a requirement for an appropriate ratio between the assessment and property value
 - The report must be available online and at the municipal offices

House Bill 118

- AS 29.49.080 Notice to Mortgage Holder Required
 - The holder of any mortgage lien on the property must be given written notice within 30 days before the contract is executed
 - Written consent from the mortgage lien holder must be obtained
- AS 29.49.090 Review Required
 - A third-party baseline energy audit and projected energy savings are required
 - Once a qualified project is complete, the municipality shall obtain third-party verification that the project was properly completed and operating as intended
- AS 29.49.100 Direct Acquisition by Owner
 - The property owner may be authorized to purchase directly the related equipment and materials or contract directly, including through lease, power purchase agreement or other service contract for the installation or modification of a qualified improvement

House Bill 118

- AS 29.49.110 Contractual Assessment must be Noticed
 - Written notice of each contractual assessment shall be filed by the municipality in the real property records, including the assessment amount, legal description of the property, name of each property owner and the reference to the statutory assessment lien provided under this chapter
- AS 29.49.210 Contractual Assessments and any Interest or Penalties are Primary Liens on the Property
 - exceptions are municipal tax liens and special assessments
 - enforcement provided in AS 29.45.320-470
 - contractual assessment liens stay with the land and not eliminated by foreclosure
 - penalties and interest may be added to delinquent installments, as provided in AS. 29.45.250
 - municipalities may recover cost and expenses, including attorney fees to collect a delinquent installment
- AS 29.49.130 Collection of Assessments
 - The governing body of a municipality may contract with the governing body of another taxing unit to collect assessments as outlined under this chapter

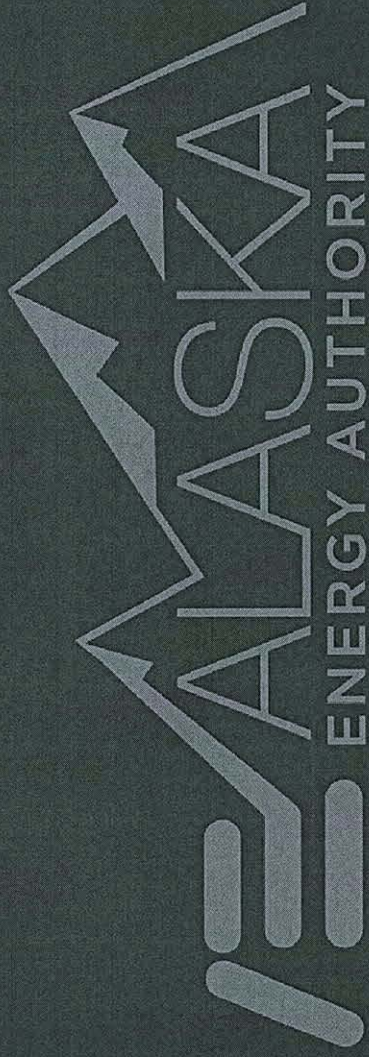
House Bill 118

- AS 29.49.140 Municipalities may Issue Bonds or Notes to Finance Qualified Projects
 - These may **not** be general obligations bonds and must be secured by one or more of the following:
 - payments of the contractual assessments
 - municipal reserves from grants, bonds, or net proceeds and other lawfully available funds
 - municipal bond insurance, lines of credit, public or private guarantees, standby bond purchase agreements, collateral assignments, mortgages, or available means of providing credit support or liquidity
 - any other funds lawfully available for purposes consistent with this chapter
 - A municipal pledge of assessments, funds, or contractual rights in connection with the issuance of bonds is a first lien valid and binding against any other person, with or without notice
 - Bonds or notes issued must further an essential public and governmental purpose, including reducing energy costs, improving electrical reliability, reduction of energy demand on utilities, economic development, employment and enhancement of property values

House Bill 118

- AS 29.49.150 Joint Implementation
 - Any combination of municipalities may agree to jointly implement or administer a program or contract with a third party. A public hearing as outlined in AS 29.49.060 is required.
- AS 29.49.160 Prohibited Acts states that the program must be voluntary
 - A municipality that establishes a PACE region may not compel a property owner to use PACE or, make any permit, license, or authorization contingent on a property owner using PACE.
- AS 29.49.890 Allows the proposed PACE provisions to be available to Home Rule and General Law Municipalities
- AS 29.49.900 Adds Definitions of Program, Qualified Improvement, Qualified Project, Real Property and Region.
- AS 29.49.995 Adds the Short Title “Municipal Property Assessed Clean Energy Act.”
- Section 3 Establishes an Immediate Effective Date

AKEnergyAuthority.org



CS FOR HOUSE BILL NO. 118(ENE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON ENERGY

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.

1 (b) An assessment under this chapter may not be imposed to repay the
2 financing of

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

5 (2) the purchase or installation of products or devices not permanently
6 fixed to real property.

7 **Sec. 29.49.030. Written contract for assessment required.** A municipality
8 may impose an assessment under this chapter only under a written contract with the
9 record owner of the real property assessed.

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

12 (b) A municipality that establishes a program under this chapter may enter into
13 a written contract with a record owner of real property in a region designated under
14 this chapter to impose an assessment to repay the financing of a qualified project on
15 property of the owner. The financing repaid through assessments may be provided by
16 a third party or, if authorized by municipal ordinance, by the municipality.

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

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

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

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

28 (2) permit fees;

29 (3) inspection fees;

30 (4) lender's fees;

31 (5) program application and administrative fees;

1 (6) project development and engineering fees;
2 (7) third-party review fees, including verification review fees, under
3 AS 29.49.090; and

4 (8) 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. 29.49.050. Designation of region.** (a) The governing body of a
8 municipality may designate an area of the municipality as a region where a record
9 owner of real property in the region may enter into a written contract to impose an
10 assessment to repay the financing of a qualified project by the owner on the owner's
11 property and, if authorized by the municipal program, finance the qualified project.

12 (b) An area designated as a region by the governing body of a municipality
13 under this section

14 (1) may include the entire municipality; and

15 (2) must be located wholly within the municipality's jurisdiction.

16 (c) For purposes of determining a municipality's jurisdiction under (b)(2) of
17 this section, the municipality's extraterritorial jurisdiction may be included.

18 (d) A municipality may designate more than one region. If multiple regions
19 are designated, the regions may be separate, overlapping, or coterminous.

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

23 (1) adopt a resolution of intent that includes

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

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

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

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

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

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

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

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

11 (I) the names of the local official who administers the program
12 and the appropriate assessor or person who collects the proposed contractual
13 assessments with property taxes imposed on the assessed property;

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

16 (3) adopt an ordinance establishing the program and the terms of the
17 program, including

18 (A) each item included in the report required under
19 AS 29.49.070, which may be incorporated by reference; and

20 (B) a description of each aspect of the program that may not be
21 amended unless another public hearing is held.

22 (b) A municipality may

23 (1) hire and set the compensation of a program administrator and
24 program staff; or

25 (2) contract for professional services necessary to administer a
26 program.

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

29 (1) program application fee paid by the property owner applying to the
30 program;

31 (2) component of the interest rate on the assessment in the written

1 contract between the municipality and the property owner; or

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

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

5 (1) a map showing the boundaries of the proposed region;

6 (2) a form for a contract between the municipality and the property
7 owner specifying the terms of

8 (A) assessment under the program; and

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

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

14 (4) a description of projects that may qualify for contractual
15 assessments;

16 (5) a plan for ensuring sufficient capital for third-party financing and,
17 if appropriate, raising capital for municipal financing for qualified projects;

18 (6) if bonds will be issued to provide capital to finance qualified
19 projects as part of the program as provided by AS 29.49.140,

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

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

25 (C) a formula for calculating

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

28 (ii) the maximum amount of an assessment;

29 (7) a method for ensuring that the period of the contractual assessment
30 does not exceed the useful life of the qualified project that is the basis for the
31 assessment;

1 (8) a description of the application process and eligibility requirements
2 for financing of qualified projects repaid by contractual assessments under the
3 program;

4 (9) a method under (b) of this section for a property owner applying to
5 participate in the program to demonstrate the property owner's ability to fulfill
6 financial obligations repaid by contractual assessments;

7 (10) a statement explaining the manner in which property will be
8 assessed and assessments will be collected;

9 (11) a statement explaining the lender notice requirement under
10 AS 29.49.080;

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

13 (13) a description of marketing and participant education services to be
14 provided for the program;

15 (14) a description of quality assurance and antifraud measures to be
16 instituted for the program; and

17 (15) the procedures for collecting the proposed contractual
18 assessments.

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

21 (1) verification that the property owner applying to participate in the
22 program is

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

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

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

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

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

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

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

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

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

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

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

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

14 (b) After a qualified project is completed, the municipality shall obtain
15 verification that the qualified project was properly completed and is operating as
16 intended.

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

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

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

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

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

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

31 (1) the amount of the assessment;

- 1 (2) the legal description of the property;
2 (3) the name of each property owner; and
3 (4) a reference to the statutory assessment lien provided under this
4 chapter.

5 **Sec. 29.49.120. Lien.** (a) Contractual assessments under this chapter and any
6 interest or penalties on the assessments are liens on the property assessed and are prior
7 and paramount to all liens except municipal tax liens and special assessments.
8 Contractual assessment liens may be enforced as provided in AS 29.45.320 -
9 29.45.470 for enforcement of property tax liens.

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

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

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

18 **Sec. 29.49.130. Collection of assessments.** The governing body of a
19 municipality may contract with the governing body of another taxing unit to perform
20 the duties of the municipality relating to collection of assessments imposed by the
21 municipality under this chapter.

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

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

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

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

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(3) 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

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

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

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

- (1) improvement of the reliability of local electrical systems;
- (2) reduction of energy costs;
- (3) reduction of energy demand on local utilities;
- (4) economic stimulation and development;
- (5) enhancement of property values; and
- (6) enhancement of employment opportunities.

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

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

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

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

- (1) 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 a qualified project through contractual assessments under this chapter; or

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

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

Sec. 29.49.900. Definitions. In this chapter,

(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).

29-GH1021\AW

Shutts
3/21/15CS FOR HOUSE BILL NO. 118(ENE)IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - FIRST SESSIONBY THE HOUSE SPECIAL COMMITTEE ON ENERGYOffered:
Referred:Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNORIntroduced: 2/18/15Referred: House Special Committee on Energy, Community and Regional Affairs, Finance

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 ~~in accordance with the requirements provided by~~under AS 29.49.060 may exercise

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powers granted under this chapter.

Sec. 29.49.020. Authorized assessments. (a) ~~An~~A municipality may impose an assessment under this chapter ~~may be imposed~~ to repay the financing of qualified projects on real 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 ~~to be assessed~~.

Sec. 29.49.040. Establishment of program. (a) The governing body of a municipality may ~~determine that it is convenient and advantageous to~~ establish a program under this chapter.

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

(c) If ~~the~~a program provides for third-party financing, ~~then~~when a municipality that enters into a written contract with a property owner under (b) of this section ~~must also~~, the municipality shall enter into a written contract with the third party that provides financing for a qualified project under the program providing for the municipality to service the debt through assessments.

(d) If ~~the~~a program provides for ~~municipality~~municipal financing, the municipality shall enter into a written contract described by (b) with the record owner of ~~this section must be a contract~~the real property to finance the qualified project through assessments.

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(e) The financing for which assessments are imposed may ~~include~~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 ~~determine that it is convenient and advantageous to~~ designate an area of the municipality as a region ~~within which the municipality and~~ where a record ~~owner~~owner of real property ~~in the region may enter into a written contract~~in the region may enter into a written contract to impose ~~assessments~~an assessment to repay the financing of ~~a~~a qualified ~~projects~~project by ~~owner~~the owner on ~~their~~the owner's property and, if authorized by the ~~municipality~~municipal program, finance the qualified project.

- (b) An area designated as a region by the governing body of a municipality under this section
 - (1) may include the entire municipality; and
 - (2) must be located wholly within the municipality's jurisdiction.

(c) For purposes of determining a municipality's jurisdiction under (b)(2) of this section, the municipality's extraterritorial jurisdiction may be included.

(d) 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 ~~must~~shall take the

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following actions in the following order:

(1) adopt a resolution of intent that includes a

(A) a finding that, if appropriate, financing qualified projects through contractual assessments ~~is~~ 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 available to property owners;

(C) a description of the types 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 ~~for~~ to make third-party financing to be available or any financing the municipality financing to be provided will provide for qualified projects;

(F) a description of ~~municipality~~ municipal debt servicing procedures ~~if for any third-party financing will be provided~~ and assessments will be collected to service a third party debt;

(G) ~~reference to~~ a notice of the report on the proposed program as provided by required under AS 29.49.070, and a statement identifying the location where the report is available for public inspection;

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

(I) ~~a statement identifying the appropriate~~ names of the local official who administers the program and the appropriate assessor-collector for purposes of consulting regarding collecting 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, including and the report ~~required by~~ prepared under AS 29.49.070; and

(3) adopt a ~~resolution~~ an ordinance establishing the program and the terms of the program, including

1 (A) each item included in the report required under
2 AS 29.49.070, which may be incorporated by reference; and

3 (B) a description of each aspect of the program that may not be
4 amended ~~only after~~unless another public hearing is held.

5 ~~(b) For purposes of (a)(3)(A) of this section, the resolution may incorporate~~
6 ~~the report or the amended version of the report, as appropriate, by reference.~~

7 ~~(c) Subject to the terms of the resolution establishing the program as~~
8 ~~referenced by (a)(3)(B) of this section, the governing body of a municipality may~~
9 ~~amend a program by resolution.~~

10 ~~(d)~~(b) A municipality may

11 (1) hire and set the compensation of a program administrator and
12 program staff; or

13 (2) contract for professional services necessary to administer a
14 program.

15 ~~(e)~~ A municipality may impose fees to offset the costs of administering a
16 program. The fees authorized ~~by~~under this subsection may be assessed as a

17 (1) program application fee paid by the property owner
18 ~~requesting~~applying to ~~participate in~~ the program;

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

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

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

24 (1) a map showing the boundaries of the proposed region;

25 (2) a form for a contract between the municipality and the property
26 owner specifying the terms of

27 (A) assessment under the program; and

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

30 (3) if the proposed program provides for third-party financing, a form
31 for a contract between the municipalities~~municipality~~ and the third party regarding the

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servicing of the debt through assessments;

(4) a description of ~~types of qualified projects that may be subject to~~ qualify for contractual assessments;

(5) a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for ~~municipality~~ municipal financing for qualified projects;

(6) if bonds will be issued to provide capital to finance qualified projects as part of the program as provided by AS 29.49.140,-a

(A) a maximum aggregate annual dollar amount for municipal financing through repaid by contractual assessments ~~to be provided by the municipality under the program;~~

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

(C) ~~method~~ a formula for determining ~~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 for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project that is the basis for the assessment;

(8) a description of the application process and eligibility requirements for financing of qualified projects ~~to be repaid through~~ by contractual assessments under the program;

(9) a method ~~as prescribed by~~ under (b) of this section for ensuring ~~that a property owners requesting~~ owner applying to participate in the program to demonstrate the financial ~~property owner's~~ ability to fulfill financial obligations ~~to be repaid through~~ by contractual assessments;

(10) a statement explaining the manner in which property will be

1 assessed and assessments will be collected;

2 (11) a statement explaining the lender notice requirement ~~provided~~
3 ~~by~~under AS 29.49.080;

4 (12) a statement explaining the review requirement ~~provided by~~under
5 AS 29.49.090;

6 (13) a description of marketing and participant education services to be
7 provided for the program;

8 (14) a description of quality assurance and antifraud measures to be
9 instituted for the program; and

10 (15) the procedures for collecting the proposed contractual
11 assessments.

12 (b) The municipality shall establish a method for ensuring a demonstration
13 ~~of~~by which a property owner shall demonstrate financial ability ~~under (a)(9) of this~~
14 ~~section must be~~ based on appropriate underwriting factors, including

15 (1) ~~providing for~~ verification that

16 ~~(A) the property owner requesting~~applying to participate ~~under~~in the
17 program is

18 ~~(iA)~~ the legal owner of the benefited property;

19 ~~(iiB)~~ current on mortgage and property tax payments; and

20 ~~(iiiC)~~ not insolvent or in bankruptcy proceedings; and

21 (2) ~~requiring~~ an appropriate ratio ~~of~~between the amount of the
22 assessment ~~to~~and the assessed value of the property.

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

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

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

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

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

30 (1) give the holder of ~~any~~a mortgage lien on the property ~~must be~~
31 ~~given~~at least 30 days' written notice of the intention of the property owner to

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participate in a program under this chapter ~~not later than 30 days before the date the~~
written contract for assessment between the owner and the municipality is executed;
and

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

Sec. 29.49.090. Review required. (a) A program established under this
chapter must require ~~for each proposed qualified project~~ 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 ~~required~~. (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.

1 **Sec. 29.49.120. Lien.** (a) Contractual assessments under this chapter and any
2 interest or penalties on the assessments are liens on the property assessed and are prior
3 and paramount to all liens except municipal tax liens and special assessments.
4 Contractual assessment liens may be enforced as provided in AS 29.45.320 -
5 29.45.470 for enforcement of property tax liens.

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

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

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

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

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

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

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

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

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

31 (4) any other funds lawfully available for purposes consistent with this

1 chapter.

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

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

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

10 (2) reduction of energy costs;

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

12 (4) economic stimulation and development;

13 (5) enhancement of property values; and

14 (6) enhancement of employment opportunities.

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

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

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

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

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

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

31 **Sec. 29.49.890. Application of chapter.** This chapter applies to home rule and

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general law municipalities.

Sec. 29.49.900. Definitions. In this chapter,

(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 ~~on the customer's side of the meter~~ 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. 23.** This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 21, 2015

SUBJECT: Edits to conform to the *Manual of Legislative Drafting* and style used in the Alaska Statutes (CSHB 118(ENE); Work Order No. 29-GH1021\W)

TO: Representative Liz Vazquez
Attn: Joshua Walton

FROM: Susie L. Shutts
Legislative Counsel

Enclosed is the House Energy Committee Substitute for HB 118 that you requested.

Edits to conform to the *Manual of Legislative Drafting* and the Alaska Statutes

This version has been edited to conform to the *Manual of Legislative Drafting* and to the style used in the Alaska Statutes.

As a general rule, the Alaska Statutes use the active rather than the passive voice and identify the actor who has a duty.¹ There are several instances where this bill benefits from replacing the passive voice with an active construction. For example, page 6, lines 21 - 22 currently reads "The method for ensuring a demonstration of financial ability under (a)(9) of this section must be based on appropriate underwriting factors." This version changes that phrase so that the municipality is identified as the actor: "The municipality shall establish a method by which a property owner shall demonstrate financial ability based on appropriate underwriting factors."

There are other instances where edits in this CS aim to clarify ambiguities in the bill, including the deletion of unnecessary language. For example, on page 4, line 13, the "collector for purposes of collecting the proposed contractual assessments" now reads "person who collects the proposed contractual assessments." In addition, terms have been edited to be more consistent and concise. For example, a property owner is now described as "applying to the program" throughout the bill instead of, as on page 4, line 30, "requesting to participate in the program."

In other instances, this CS eliminates repetition and alters syntax to prevent confusion.

¹ See the *Manual of Legislative Drafting* (2015), p. 66 ("As a general rule, use the active rather than the passive voice. This is especially important where it would otherwise be unclear just who is to do what the statute seeks to have done.").

Public hearing provision

On page 4, lines 21 - 22, under AS 29.49.060(a)(3)(B), a municipality must adopt an ordinance that establishes the program and its terms, including "a description of each aspect of the program that may be amended only after another public hearing is held."

This requirement seems unnecessary since under AS 29.25.020, the general procedure for adopting an ordinance, except for an emergency ordinance, requires that the ordinance "be set by the governing body for a public hearing by the affirmative vote of a majority of the votes authorized on the question,"² "at least five days before the public hearing a summary of the ordinance shall be published together with a notice of the time and place for the hearing,"³ "copies of the ordinance shall be available to all persons present at the hearing, or the ordinance shall be read in full,"⁴ and "during the hearing the governing body shall hear all interested persons wishing to be heard."⁵ AS 29.25.020 only applies to general law municipalities. AS 29.20.020, which applies to home rule and general law municipalities, requires that meetings be public as provided in AS 44.62.310 and that the governing body "provide reasonable opportunity for the public to be heard at regular and special meetings."

General law municipalities

AS 29.49.890 of this bill states that AS 29.49 applies to home rule and general law municipalities. And AS 29.49.010 states that "[a] municipality that establishes a program under AS 29.49.060 may exercise powers granted under this chapter." Despite these provisions, it is unclear whether all general law municipalities would be authorized to establish programs under AS 29.49 by mere passage of CSHB 118(ENE) or whether a municipality would still need to acquire the powers otherwise authorized under AS 29.49. It is also unclear whether the powers granted by AS 29.49 could be exercised by all general law boroughs on an areawide basis.

If the intent of this bill is to authorize all boroughs to establish programs under this chapter, then it might be better to amend AS 29.35.200, AS 29.35.210, and AS 29.35.220 and specifically provide that these general law boroughs may provide for energy improvement assessment programs on an areawide basis.⁶

² AS 29.25.020(b)(2).

³ AS 29.25.020(b)(3).

⁴ AS 29.25.020(b)(4).

⁵ AS 29.25.020(b)(5).

⁶ 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.

Representative Liz Vazquez
March 21, 2015
Page 3

Extraterritorial jurisdiction

AS 29.35.020(a) permits a municipality that is otherwise authorized by law to provide a facility or service outside its boundaries to regulate their use and regulation to the extent that the jurisdiction where the facilities or services are located does not regulate them. However, the powers in AS 29.49 are not included in AS 29.35.020(a). For this reason, the meaning of AS 29.49.050(c), which permits a municipality to exercise "extraterritorial jurisdiction," is unclear.

SLS:dla
15-197.dla

Enclosure



Fairbanks North Star Borough Mayor's Office

809 Pioneer Road PO Box 71267 Fairbanks, Alaska 99707-1267 (907)459-1300 FAX 459-1102

DATE: June 26, 2014

To: Department of Energy
From: Fairbanks North Star Borough
Re: Support for Alaska Energy Authority Grant Application

To whom it may concern,

This letter is written in support of the grant application submitted by the Alaska Energy Authority (AEA) to the Department of Energy (DOE) to support implementation of a Property Assessed Clean Energy (PACE) program in the Fairbanks North Star Borough (FNSB).

The FNSB is Alaska's 2nd largest metropolitan area in Alaska with over 100,000 people and more than 1,300 privately owned commercial properties currently heating with diesel fuel. The high and unpredictable expense of fossil fuels, coupled with our harsh northern climate, make the cost of energy a severe burden in our community. The Interior Energy Project, another energy project being implemented by the state, will expand the availability of natural gas to consumers in the FNSB by 2016. Development of a PACE program can offer an important financing tool to help businesses transition to this less expensive and cleaner burning fuel as soon as possible.

The faster the business community is able to convert from diesel to natural gas the sooner residential properties will see the benefits of access to natural gas for space and water heat. The more businesses that sign up for natural gas the better the economics for expanding the distribution system to encompass more residences.

The City of Fairbanks and the City of North Pole, both within the FNSB, were designated PM2.5 non-attainment areas in 2009, meaning they exceed the limit of 35 micrograms/cubic meter for fine particulate matter. This is a serious concern for public health as well as economic development. The Alaska Division of Air Quality analysis "...shows that local emission from wood stoves, burning distillate oil, industrial sources, and mobile emissions contribute to particulate pollution." Conversion from diesel to natural gas will improve air quality in the FNSB.

I encourage the DOE to give favorable consideration to the AEA grant application that will support development of a PACE program in the Fairbanks North Star Borough. Funds for this effort could be critical in incentivizing businesses to invest in conversion to natural gas in the short run and create a financing mechanism to ease implementation of additional efficiency measures for years to come.

Sincerely,

A handwritten signature in black ink, appearing to read 'Luke Hopkins'.

Luke Hopkins, Mayor Fairbanks North Star Borough



LEADER in All We Do

June 27, 2014

Department of Energy
1000 Independence Ave SW
Washington, DC 20585

Re: Support for Alaska Energy Authority Grant Application

To whom it may concern,

This letter is written in support of the grant application submitted by the Alaska Energy Authority (AEA) to the Department of Energy (DOE) to support implementation of a Property Assessed Clean Energy (PACE) program in the Fairbanks North Star Borough (FNSB).

The FNSB is Alaska's 2nd largest metropolitan area in Alaska with over 100,000 people and more than 1,300 privately owned commercial properties currently heating with diesel fuel. The high and unpredictable expense of fossil fuels, coupled with our harsh northern climate, make the cost of energy a severe burden in our community.

The Interior Energy Project, another energy project being implemented by the state, will expand the availability of natural gas to consumers in the FNSB by 2016. Development of a PACE program can offer an important financing tool to help businesses transition to this less expensive and cleaner burning fuel as soon as possible.

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industrial sources, and mobile emissions contribute to particulate pollution." Conversion from diesel to natural gas will improve air quality in the FNSB.

Doyon is one of the thirteen Native regional corporations established by Congress under the terms of the Alaska Native Claims Settlement Act ("ANCSA"), Pub. L. No. 92-203, 85 Stat. 688 (1971), as amended. Headquartered in Fairbanks, Doyon has more than 18,500 shareholders, many of whom reside in remote villages with few economic opportunities. Doyon is the largest private landowner in Alaska, with a land entitlement under ANCSA of more than 12.5 million acres. Doyon's mission is to promote the economic and social well-being of its shareholders and future shareholders, to strengthen its Native way of life, and to protect and enhance its land and resources. Doyon believes this program has the potential to positively impact our shareholders and communities living in our region.

I encourage the DOE to give favorable consideration to the AEA grant application that will support development of a PACE program in the Fairbanks North Star Borough. Funds for this effort could be critical in incentivizing businesses to invest in conversion to natural gas in the short run and create a financing mechanism to ease implementation of additional efficiency measures for years to come.

Sincerely,



Aaron Schutt
President & CEO
Doyon, Limited



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Environmental
Conservation**

DIVISION OF AIR QUALITY
Director's Office

410 Willoughby Avenue, Suite 303
PO Box 111800
Juneau, AK 99811-1800
Main: 907-465-5100
Toll free: 866-241-2805
fax: 907-465-5129
<http://dec.alaska.gov/air/index.htm>

June 23, 2014

U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Subject: Support for Alaska Energy Authority Grant Application

To Whom It May Concern:

This letter is written in support of the grant application submitted by the Alaska Energy Authority (AEA) to the Department of Energy (DOE) to support implementation of a Property Assessed Clean Energy (PACE) program in the Fairbanks North Star Borough (FNSB). The FNSB is the 2nd largest metropolitan area in Alaska with over 100,000 people and more than 1,300 privately owned commercial properties currently heating with diesel fuel. The high and unpredictable expense of fossil fuels coupled with our harsh northern climate make the cost of energy a severe burden in the community.

The Interior Energy Project, another energy project being implemented by the state, will expand the availability of natural gas to consumers in the FNSB by 2016. Development of a PACE program can offer an important financing tool to help businesses transition to this less expensive and cleaner burning fuel as soon as possible. The faster the business community is able to convert from diesel to natural gas the sooner residential properties will see the benefits of access to natural gas for space and water heat. The more businesses that sign up for natural gas the better the economics for expanding the distribution system to encompass more residences.

The City of Fairbanks and the City of North Pole, both within the FNSB, are within the EPA-designated fine particulate matter (PM_{2.5}) air quality non-attainment area, meaning they exceed the limit of 35 micrograms/cubic meter for PM_{2.5}. This is a serious concern for public health as well as economic development. Division of Air Quality analysis shows that local emissions from wood stoves, burning distillate oil, industrial sources, and mobile emissions contribute to particulate pollution. Conversion of space heating from diesel to natural gas will improve PM_{2.5} air quality in the FNSB.

In addition to the benefits of reduced heat cost and improved air emissions associated with conversion to natural gas, establishment of a PACE program has the added benefit of creating a tool for financing other types of efficiency measures including lighting and weatherization. Efficiency measures reduce power demand and heating needs that result in less fuel burned and a reduction in PM_{2.5} air pollution.

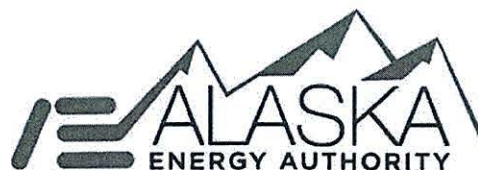
I encourage the DOE to give favorable consideration to the AEA grant application that will support development of a PACE program in the FNSB. Funds for this effort could be critical in incentivizing businesses to invest in conversion to natural gas in the short run and create a financing mechanism to ease

implementation of additional efficiency measures for years to come. The co-benefits that would result to air quality in the FNSB will help the state and local community to achieve their PM2.5 attainment goals.

Sincerely,

A handwritten signature in cursive script that reads "Alice Edwards".

Alice Edwards
Director



February 19, 2015

Representative Jim Colver
House Energy Committee
State Capitol, Room 424
Juneau, Alaska 99801

Representative Liz Vazquez
House Energy Committee
State Capitol, Room 428
Juneau, Alaska 99801

Re: HB 118 Muni Energy Improvement Assessments/Bonds

Dear Representatives Colver and Vazquez:

Please accept this request for your consideration to schedule House Bill 118- Muni Energy Improvement Assessments/Bonds- before the House Energy Committee at your earliest convenience.

The legislation would provide the opportunity for local governments to create a Property Assessed Clean Energy (PACE) financing mechanism. PACE would incentivize energy efficiency improvements to commercial buildings by allowing a local government financing option as part of property tax assessments.

Thirty-two other states have created similar financing structures. Under a PACE program, interested business owners first have their buildings audited to determine potential energy savings. They then apply to traditional lending sources (loan programs, local lenders, etc.) for financing that is repaid through an addition to their property tax assessment that may be in place for up to 20 years. In the Interior, the PACE financing mechanism can incentivize conversion to natural gas.

HB 118 would allow local governments and businesses to opt-in on a voluntary basis to adopt PACE financing mechanisms. Lenders are provided with additional certainty of repayment while business owners are traditionally supportive because it allows them to finance improvements over an extended period of time with low-cost capital.

If you have any questions regarding this bill, please feel free to contact me at 771-3012, or AEA's Energy Policy and Outreach Manager, Emily Ford at 771-3961 or cell 360-2131.

Sincerely,

Sara Fisher-Goad *for*
Executive Director



House Bill 118- Muni Energy Improvement Assessments/Bonds

DETAILED SECTIONAL ANALYSIS

- 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. 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 Assesse Clean Energy Act.
- Section 2 sets an immediate effective date.