



LAWS OF ALASKA

2022

Source

SCS HB 227(L&C) am S

Chapter No.

AN ACT

An Act relating to municipal energy and resilience improvement assessment programs; relating to the planning commission membership apportionment requirement for first and second class boroughs; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

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1 An Act relating to municipal energy and resilience improvement assessment programs;
2 relating to the planning commission membership apportionment requirement for first and
3 second class boroughs; and providing for an effective date.

4

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

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

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

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

11 * **Sec. 5.** AS 29.40.020(a) is amended to read:

12 (a) Each first and second class borough shall establish a planning commission
13 consisting of five residents unless a greater number is required by ordinance.
14 [COMMISSION MEMBERSHIP SHALL BE APPORTIONED SO THAT THE
15 NUMBER OF MEMBERS FROM HOME RULE AND FIRST CLASS CITIES
16 REFLECTS THE PROPORTION OF BOROUGH POPULATION RESIDING IN
17 HOME RULE AND FIRST CLASS CITIES LOCATED IN THE BOROUGH.] A
18 member shall be appointed by the borough mayor for a term of three years subject to
19 confirmation by the assembly, except that a member from a home rule or first class
20 city shall be selected from a list of recommendations submitted by the council.
21 Members first appointed shall draw lots for one, two, and three year terms.
22 Appointments to fill vacancies are for the unexpired term. The compensation and
23 expenses of the planning commission and its staff are paid as directed by the
24 assembly. **If a first or second class borough has a population of less than 20,000 or**
25 **more than 75,000, the commission membership shall be apportioned so that the**
26 **number of members from home rule and first class cities reflects the proportion**
27 **of borough population residing in home rule and first class cities located in the**
28 **borough.**

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

30 (a) A municipality may establish an energy **and resilience** improvement
31 assessment program under AS 29.55.100 - 29.55.165 to finance the **construction,**

1 installation, or modification of permanent improvements that are [(1)] fixed to **new**
2 **construction or** existing privately owned commercial or industrial property [;] and
3 **that**

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

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

17 * **Sec. 7.** AS 29.55.100(b) is amended to read:

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

20 (1) adopt a resolution of intent that includes

21 (A) a finding that financing energy **and resilience**
22 improvement projects through assessments serves a valid public purpose;

23 (B) a statement that the municipality intends to allow privately
24 owned commercial or industrial property owners to make assessments to repay
25 financing for energy **and resilience** improvement projects;

26 (C) a description of energy **and resilience** improvement
27 projects that may be subject to assessments;

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

30 (E) a description of any proposed arrangements to make third-
31 party financing available or any financing the municipality will provide for

1 energy **and resilience** improvement projects; and

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

4 (2) prepare the report required under AS 29.55.110 and provide notice
5 of the report with the

6 (A) location where the report is available for public inspection;

7 (B) time and place for a public hearing on the proposed
8 program; and

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

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

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

17 * **Sec. 8.** AS 29.55.100(d) is amended to read:

18 (d) A municipality may impose fees to offset the costs of administering a
19 program. The fees authorized under this subsection may be **imposed** [ASSESSED] as
20 a

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

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

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

27 * **Sec. 9.** AS 29.55.105(a) is amended to read:

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

29 (1) enter into a written contract with a record owner of privately owned
30 commercial or industrial property in a region designated under AS 29.55.100 to
31 impose an assessment to repay the financing of an energy **or resilience** improvement

1 project on that property;

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

5 * **Sec. 10.** AS 29.55.105(c) is amended to read:

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

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

10 (2) permit fees;

11 (3) inspection fees;

12 (4) lender's fees;

13 (5) program application and administrative fees;

14 (6) energy **or resilience** improvement project development and
15 engineering fees;

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

18 (8) **capitalized interest;**

19 **(9) interest reserves;**

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

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

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

26 * **Sec. 11.** AS 29.55.105(f) is amended to read:

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

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

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

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

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

10 * **Sec. 13.** AS 29.55.105 is amended by adding a new subsection to read:

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

14 * **Sec. 14.** AS 29.55.110(a) is amended to read:

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

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

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

21 (A) assessment under the program; and

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

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

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

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

- 1 (6) if bonds will be issued to provide capital to finance energy **and**
2 **resilience** improvement projects as part of the program as provided by AS 29.55.140,
3 (A) a maximum aggregate annual dollar amount for municipal
4 financing repaid by assessments under the program;
5 (B) if requests appear likely to exceed the authorization
6 amount, a priority order for ranking a property owner's application for
7 financing repaid by assessments; and
8 (C) a formula for calculating
9 (i) the interest rate and period during which contracting
10 owners would pay an assessment; and
11 (ii) the maximum amount of an assessment;
12 (7) a method to calculate a period of assessment consistent with
13 AS 29.55.105(f);
14 (8) a description of the application process and eligibility requirements
15 for financing repaid by assessments under the program;
16 (9) a method for a property owner applying to participate in the
17 program to demonstrate the property owner's ability to fulfill financial obligations and
18 pay assessments; the method must be based on appropriate underwriting factors,
19 including
20 (A) verification that the property owner
21 (i) is the legal owner of the benefited property;
22 (ii) is current on mortgage and property tax payments;
23 and
24 (iii) is not insolvent or in bankruptcy proceedings; and
25 (B) an appropriate ratio between the amount of the assessment
26 and the **market** [ASSESSED] value of the property;
27 (10) an explanation of the manner in which the municipality shall
28 assess the property and collect assessments;
29 (11) the lender notice requirement under AS 29.55.115;
30 (12) the review requirement under AS 29.55.120;
31 (13) a description of marketing and participant education services

1 provided by the municipality for the program;

2 (14) a description of quality assurance and antifraud measures
3 instituted by the municipality for the program and the consequence or penalty
4 prescribed by the municipality for a property owner who participates in the program
5 but does not complete an energy **or resilience** improvement project as proposed; and

6 (15) a description of the insurance requirements, including a
7 requirement that the property owner have insurance against damage to the energy **or**
8 **resilience** improvement project for the life of the assessment.

9 * **Sec. 15.** AS 29.55.115 is amended to read:

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

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

14 (1) give each holder of a mortgage lien on the property at least 30
15 **days'** [DAYS"] written notice of the intention of the property owner to participate in a
16 program under AS 29.55.100; and

17 (2) obtain [A] written consent from each holder of a mortgage lien on
18 the property.

19 * **Sec. 16.** AS 29.55.120 is amended to read:

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

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

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

26 (B) the projected reduction in energy costs, energy
27 consumption or demand, or emissions affecting local air quality, **or increase in**
28 **resilience,** as appropriate; and

29 (2) for each completed energy **or resilience** improvement project,
30 verification that the energy **or resilience** improvement project was properly completed
31 and is operating as intended.

1 * **Sec. 17.** AS 29.55.125 is amended to read:

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

5 (1) purchase directly the related equipment and materials for the
6 energy **or resilience** improvement project; and

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

9 * **Sec. 18.** AS 29.55.135(b) is amended to read:

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

13 * **Sec. 19.** AS 29.55.140(a) is amended to read:

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

16 * **Sec. 20.** AS 29.55.140(d) is amended to read:

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

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

20 (2) reduction of energy costs;

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

22 (4) reduction of emissions affecting local air quality;

23 (5) economic stimulation and development;

24 (6) enhancement of property values;

25 (7) enhancement of employment opportunities;

26 **(8) improvement of building resilience.**

27 * **Sec. 21.** AS 29.55.150 is amended to read:

28 **Sec. 29.55.150. Prohibited acts.** A municipality that establishes a region under
29 AS 29.55.100 may not make the issuance of a permit, license, or other authorization
30 from the municipality to a person who owns property in the region contingent on the
31 person entering into a written contract to repay the financing of an energy **or**

1 **resilience** improvement project through assessments under AS 29.55.105, or
2 otherwise compel a person who owns property in the region to enter into a written
3 contract to repay the financing of an energy **or resilience** improvement project
4 through assessments under AS 29.55.105.

5 * **Sec. 22.** AS 29.55.160 is amended by adding a new paragraph to read:

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

7 * **Sec. 23.** AS 29.55.165 is amended to read:

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

10 * **Sec. 24.** AS 29.55.105(d)(1) and 29.55.105(h) are repealed.

11 * **Sec. 25.** This Act takes effect immediately under AS 01.10.070(c).