

SENATE BILL NO. 330

INTRODUCED BY C. VINCENT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNMENTS TO ADOPT

5 PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS THROUGH DISTRICTS TO PROMOTE THE USE OF

6 RENEWABLE ENERGY SYSTEMS AND ENERGY CONSERVATION MEASURES; ESTABLISHING THE

7 PROPERTY-ASSESSED CLEAN ENERGY ACT OF MONTANA; PROVIDING FOR THE FINANCING OF

8 PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS THROUGH VOLUNTARY PROPERTY

9 ASSESSMENTS, COMMERCIAL LENDING, AND OTHER MEANS; AUTHORIZING LOCAL GOVERNMENTS

10 TO ISSUE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS TO PAY THE COST OF ENERGY

11 CONSERVATION PROJECTS; PROVIDING FOR THE REPAYMENT OF BONDS, NOTES, AND OTHER

12 EVIDENCES OF INDEBTEDNESS; AUTHORIZING CERTAIN FEES; PROVIDING PROPERTY-ASSESSED

13 CLEAN ENERGY PROGRAM PLANNING REQUIREMENTS; ESTABLISHING PROCEDURES FOR LOCAL

14 GOVERNMENT DEVELOPMENT OF PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS; PRESCRIBING

15 THE POWERS AND DUTIES OF THE GOVERNING BODIES OF LOCAL GOVERNMENTS RELATED TO

16 PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS; ALLOWING LOCAL GOVERNMENTS TO JOINTLY

17 ESTABLISH PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS; REQUIRING THE DEPARTMENT OF

18 ENVIRONMENTAL QUALITY TO PROVIDE TECHNICAL ASSISTANCE AND EDUCATIONAL MATERIALS ON

19 PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS; AND AMENDING SECTIONS 7-7-2501, 7-7-4101,

20 AND 90-4-1202, MCA."

21

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23

24 NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Property-Assessed

25 Clean Energy Act of Montana".

26

27 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 9], unless the context requires

28 otherwise the following definitions apply:

29 (1) "District" means a district that is established under [sections 1 through 9] by a local government and

30 that lies within the local government's jurisdictional boundaries. A local government may create more than one

1 district under a program, and districts may be separate, overlapping, or coterminous.

2 (2) "Energy conservation measure" means a cost-effective energy improvement, repair, alteration, or  
3 addition, or the use of equipment, fixtures, or furnishings in a building designed to reduce energy consumption,  
4 water consumption, or operation and maintenance costs. The term includes but is not limited to:

5 (a) insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems;

6 (b) storm windows and doors, including multiglazed windows and doors, heat-absorbing or heat-reflective  
7 glazed windows, coated window and door systems, additional glazing, reductions in glass area, and other window  
8 and door system modifications that reduce energy consumption;

9 (c) automated energy control systems;

10 (d) heating, ventilating, or air-conditioning and distribution system modifications or replacements;

11 (e) caulking, weather-stripping, or air sealing;

12 (f) replacement or modification of lighting fixtures to reduce the energy use of the lighting system;

13 (g) energy recovery systems;

14 (h) daylighting systems;

15 (i) installation or upgrades of electrical wiring or outlets to charge a motor vehicle that is fully or partially  
16 powered by electricity;

17 (j) fuel source changes that result in cost savings;

18 (k) measures to reduce the usage of water or to increase the efficiency of water usage; and

19 (l) any other installation or modification of equipment, devices, or materials approved as a utility  
20 cost-saving measure by the governing body.

21 (3) "Energy conservation project" means the installation or modification of an energy conservation  
22 measure or the acquisition, installation, or improvement of a renewable energy system.

23 (4) "Governing body" means the legislative authority of a local government.

24 (5) "Local government" means a county, city, town, or alternative local government created pursuant to  
25 Title 7, chapter 3.

26 (6) (a) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint  
27 venture, or trust that is organized, permitted, or existing under the laws of this state or any other state, including  
28 a federal corporation, or a combination of individuals, firms, partnerships, associations, corporations,  
29 unincorporated joint ventures, or trusts.

30 (b) The term does not include a local government.

1 (7) "Property" means privately owned residential, commercial, or industrial real property.

2 (8) "Property-assessed clean energy program" or "program" means a program created pursuant to  
3 [sections 1 through 9].

4 (9) "Record owner" means the person or persons possessing the most recent fee title as shown by the  
5 records of the county clerk and recorder.

6 (10) "Renewable energy" has the meaning provided in 15-24-3102.

7 (11) "Renewable energy system" means a fixture, product, device, or interacting group of fixtures,  
8 products, or devices on the customer's side of the meter that uses one or more forms of renewable energy to  
9 generate electricity or to reduce the use of nonrenewable energy. The term includes a biomass stove but does  
10 not include an incinerator or a digester.

11  
12 **NEW SECTION. Section 3. Duties of department.** As resources allow, the department of  
13 environmental quality established in 2-15-3501 shall provide technical assistance and an educational website to  
14 assist local governments interested in developing and establishing property-assessed clean energy programs.

15  
16 **NEW SECTION. Section 4. Program authorized -- contracts.** (1) In accordance with [sections 5 and  
17 6], the governing body of a local government may establish a property-assessed clean energy program and may  
18 create a district or districts under the program.

19 (2) (a) The governing body of a local government may enter into a contract with record owners within  
20 a district to finance or refinance one or more energy conservation projects on property included in a district in  
21 accordance with [sections 1 through 9].

22 (b) The contract may provide for the repayment of the cost of an energy conservation project through  
23 an assessment in accordance with [section 7] on a property.

24 (c) Financing or refinancing may include the cost of materials and labor necessary for the installation  
25 or modification of energy conservation projects, permit fees, inspection fees, application and administrative fees,  
26 bank fees, and all other fees incurred by the record owner for the energy conservation project on a specific or  
27 pro rata basis, as determined by the governing body of a local government.

28  
29 **NEW SECTION. Section 5. Elements of program plan -- contract requirements.** (1) Prior to  
30 establishing a program in accordance with [section 6], the governing body of a local government shall prepare

- 1 a program plan. Subject to subsections (2) through (4), the program plan must include:
- 2 (a) provisions for marketing the program and providing participant education;
- 3 (b) maximum aggregate annual dollar amounts for all financing to be provided by the governing body
- 4 of a local government under the program;
- 5 (c) the types of energy conservation projects that may be financed under the program;
- 6 (d) options for raising capital to finance energy conservation projects under the program. Options may
- 7 include but are not limited to:
- 8 (i) the sale of bonds or notes and any reserve funds to be used as security for bonds or notes;
- 9 (ii) public-private partnership agreements using commercial lenders;
- 10 (iii) funds to be advanced by a local government from another source; or
- 11 (iv) owner-arranged financing from a commercial lender. If owner-arranged financing is used, the
- 12 governing body of a local government may impose an assessment pursuant to [section 7] and make payments
- 13 to the commercial lender.
- 14 (e) provisions for an adequate debt service reserve fund;
- 15 (f) quality assurances and antifraud measures;
- 16 (g) minimum requirements for a contractor to complete an energy conservation project;
- 17 (h) clearly defined work standards for contractors;
- 18 (i) contractor management systems and procedures designed to monitor contractor performance and
- 19 to manage, track, and resolve consumer complaints; and
- 20 (j) a description of the proposed financial arrangement and contract terms between the local government
- 21 and record owners pursuant to subsection (3).
- 22 (2) (a) A program plan for residential energy conservation projects with an estimated cost of \$20,000
- 23 or more must include an energy savings calculation. Commercial and industrial energy conservation projects with
- 24 an estimated cost of \$75,000 or more must include an energy analysis completed by a third party to determine
- 25 cost and energy savings.
- 26 (b) Energy savings calculations and analysis completed in accordance with subsection (2)(a) must be
- 27 completed by an architect or engineer licensed in Montana.
- 28 (c) When an energy conservation project that required an energy savings calculation or analysis
- 29 pursuant to subsection (2)(a) is completed, the contractor who completed the project shall submit written
- 30 verification to the governing body of a local government that the energy conservation project was properly

1 installed and is operating as intended.

2 (3) A proposed financial arrangement must be included in a program plan in accordance with subsection  
3 (1)(j) and must include:

4 (a) credit criteria requirements and a description of an underwriting process for record owners. If the  
5 energy conservation project has an estimated cost of \$5,000 or more, a credit review process is also required.

6 (b) application, administration, or other program fees that will be charged to record owners participating  
7 in the program that will be used to finance costs incurred by the local government as a result of the program;

8 (c) a requirement that the record owner of a property subject to a mortgage or trust deed obtain written  
9 consent from the mortgage holder, trust deed beneficiary, or loan service before participating in the program; and

10 (d) a model contract between the governing body of a local government and a record owner containing  
11 the terms and conditions of financing and an assessment that meets the requirements of [section 7] under the  
12 program. The model contract must include full disclosure of costs, including the effective interest rate of the  
13 assessment in accordance with [section 7], any administrator fees, the estimated payment schedule, and the  
14 placement of a lien on the property.

15 (4) (a) Prior to a local government and a record owner for a residential energy conservation project  
16 entering into a contract under a program established pursuant to [section 6], the local government shall obtain  
17 independent verification from the record owner that the record owner understands and accepts the terms of the  
18 contract.

19 (b) The contract must allow the record owner to cancel the contract within 3 business days of signing  
20 the contract.

21 (c) The contract must include full disclosure that by entering into the contract, the record owner may incur  
22 a property tax lien on the property included under the contract.

23  
24 **NEW SECTION. Section 6. Establishment of program.** (1) To establish a property-assessed clean  
25 energy program, the governing body of a local government shall:

26 (a) adopt a resolution of intent that includes:

27 (i) a statement of intent to provide funds for energy conservation projects, which may be repaid by  
28 assessments in accordance with [section 7] on property included in a district, with the agreement of the record  
29 owners;

30 (ii) a description of the proposed arrangements for financing the program;

- 1 (iii) the types of energy conservation projects that may be financed;
- 2 (iv) a reference to the program plan required by [section 5] and a location where the plan is available for
- 3 public inspection; and
- 4 (v) the time and place for a public hearing on the proposed program;
- 5 (b) hold a public hearing at which the public may comment on the proposed program and the program
- 6 plan required by [section 5]; and
- 7 (c) adopt a resolution establishing the program and setting the terms and conditions of the program,
- 8 including:
  - 9 (i) how the governing body of a local government will meet the program plan requirements established
  - 10 in [section 5]. To meet the requirement of this subsection (1)(c)(i), the resolution may incorporate a program plan
  - 11 or an amended version of a program plan by reference.
  - 12 (ii) a description of the aspects of the program that may be changed without a public hearing and the
  - 13 aspects that may be changed only after a public hearing;
  - 14 (iii) identification of an official authorized to enter into a program contract on behalf of the program with
  - 15 entities providing funding for the program; and
  - 16 (iv) identification of an official authorized to enter into a program contract on behalf of the governing body
  - 17 of a local government with record owners.
- 18 (2) A property-assessed clean energy program may be changed by resolution of the governing body.
- 19 Adoption of the resolution must be preceded by a public hearing if required pursuant to subsection (1)(c)(ii).

20

21 **NEW SECTION. Section 7. Assessments.** (1) (a) A local government may impose an assessment

22 under a property-assessed clean energy program pursuant to a written contract with the record owner of the

23 property to be assessed.

24 (b) The term of the assessment may not exceed the useful life of an energy conservation project paid

25 for by the assessment.

26 (2) Before entering into a contract with a record owner under a program, the local government shall verify

27 that:

- 28 (a) delinquent taxes, special assessments, or water or sewer charges are not due on the property; and
- 29 (b) delinquent assessments on the property under a property-assessed clean energy program are not
- 30 due.

1           (3) (a) An assessment imposed under a property-assessed clean energy program, including any interest  
2 on the assessment and any penalty, constitutes a program lien against the property on which the assessment  
3 is imposed until the assessment, including any interest or penalty, is paid in full. The lien runs with the property  
4 and has the same priority and status as other property tax and assessment liens.

5           (b) The governing body of a local government has the same rights in the case of delinquency in the  
6 payment of an assessment as it does with respect to delinquent property taxes. When the assessment, including  
7 any interest and penalty, is paid, the lien must be removed from the property.

8           (4) (a) Except as provided in subsection (4)(b), installments of assessments due under a program must  
9 be included in each tax bill issued under 15-16-101 and must be collected at the same time and in the same  
10 manner as taxes collected under Title 15, chapter 16.

11           (b) Installments may be billed and collected as provided in a special assessment ordinance of general  
12 applicability adopted by a local government.

13

14           NEW SECTION. Section 8. Financing. (1) A local government may issue bonds or notes to finance  
15 energy projects under a property-assessed clean energy program.

16           (2) Bonds or notes issued under subsection (1) may not be general obligations of the local government  
17 but must be secured, as established by the governing body in a resolution or ordinance, by one or more:

18           (a) assessment payments on property within the district or districts specified;

19           (b) reserves established by the local government from grant, bond, or note proceeds or from other  
20 available funds;

21           (c) municipal bond insurance, lines or letters of credit, public or private guaranties, standby bond  
22 purchase agreements, collateral assignments, mortgages, or any other means of providing credit support or  
23 liquidity; or

24           (d) any other amounts available for the purposes of [sections 1 through 9].

25           (3) A pledge of assessments, funds, or contractual rights made by a governing body in connection with  
26 the issuance of bonds or notes by a local government in accordance with [sections 1 through 9] is a statutory lien  
27 on the assessments, funds, or contractual rights pledged in favor of the person or persons given the pledge  
28 without further action by the governing body. The statutory lien is valid and binding against all other persons, with  
29 or without notice.

30           (4) Bonds or notes of one series issued under [sections 1 through 9] may be secured on a parity with

1 bonds or notes of another series issued by the local government pursuant to the terms of a master indenture or  
 2 master resolution entered into or adopted by the governing body of the local government.

3 (5) Bonds or notes issued under [sections 1 through 9] and interest payable on the bonds and notes are  
 4 exempt from taxation.

5  
 6 **NEW SECTION. Section 9. Joint programs.** (1) A local government may join with another local  
 7 government or with any person by contract or otherwise to implement a property-assessed clean energy program  
 8 in whole or in part.

9 (2) If a property-assessed clean energy program is implemented jointly by two or more local  
 10 governments, a single public hearing held jointly by the local governments meets the requirements of [section  
 11 6].

12  
 13 **Section 10.** Section 7-7-2501, MCA, is amended to read:

14 **"7-7-2501. Authority to issue revenue bonds -- refunding revenue bonds.** (1) A county may issue  
 15 county revenue bonds in the same manner and with the same effect as provided in chapter 7, part 44, of this title  
 16 for issuance of municipal revenue bonds. County revenue bonds may be issued to finance any project or activity  
 17 enumerated in chapter 16, part 21, of this title, ~~or~~ in Title 75, chapter 10, part 1, or in [sections 1 through 9].  
 18 Revenue from the project for which the bonds are issued is the only revenue upon which a lien under the  
 19 provisions of 7-7-4431 may apply. A lien may not attach to other revenue or other property within the county.

20 (2) A county may refund revenue bonds issued under the authority provided in subsection (1) by the  
 21 method provided in either part 45 or part 46 of chapter 7.

22 (3) In construing, for purposes of this section, the provisions of parts 44, 45, or 46 of chapter 7,  
 23 "municipal" is considered to refer to the county and "governing body" is considered to refer to the board of county  
 24 commissioners whenever the board of county commissioners is acting pursuant to subsection (1).

25 (4) If applicable, the county shall specify whether the bonds are tax credit bonds as provided in 17-5-117,  
 26 recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified  
 27 energy conservation bonds as provided in 7-7-141."

28  
 29 **Section 11.** Section 7-7-4101, MCA, is amended to read:

30 **"7-7-4101. Purposes for which indebtedness may be incurred.** The city or town council has power



1 to contract an indebtedness on behalf of a city or town, upon the credit of the city or town, by borrowing money,  
 2 issuing bonds, issuing notes, entering into leases, entering into lease-purchase agreements, or entering into  
 3 installment purchase contracts for the following purposes:

4 (1) acquiring land for and designing and erecting public buildings;

5 (2) acquiring land for and designing and constructing sewers, sewage treatment and disposal plants,  
 6 waterworks, reservoirs, reservoir sites, and lighting plants;

7 (3) supplying the city or town with water by contract and the construction or purchase of canals or ditches  
 8 and water rights for supplying the city or town with water;

9 (4) designing and constructing bridges, docks, wharves, breakwaters, piers, jetties, and moles;

10 (5) acquiring, opening, or widening any street and improving the street by constructing, reconstructing,  
 11 and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost relating  
 12 to the project;

13 (6) purchasing or leasing fire apparatus, street and other equipment, and personal property, including  
 14 without limitation, vehicles, telephone systems, and photocopy and office equipment, including computer  
 15 hardware and software;

16 (7) building, purchasing, designing, constructing, and maintaining devices intended to protect the safety  
 17 of the public from open ditches carrying irrigation or other water;

18 (8) funding outstanding warrants and maturing bonds; ~~and~~

19 (9) repaying tax protests lost by the city, town, or other municipal corporation; and

20 (10) financing energy conservation projects pursuant to [sections 1 through 9]."

21

22 **Section 12.** Section 90-4-1202, MCA, is amended to read:

23 **"90-4-1202. Definitions.** Unless the context requires otherwise, in this part, the following definitions  
 24 apply:

25 (1) "Ancillary services" has the meaning provided in 69-3-2003.

26 (2) "Bond" means bond, note, or other obligation.

27 (3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant  
 28 to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.

29 (4) "Commission" means the public service commission provided for in 69-1-102.

30 (5) "Governing authority" means a council, board, or other body governing the affairs of the governmental

1 body.

2 (6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian  
3 tribal government, or any other political subdivision of the state, however organized.

4 (7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis  
5 due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

6 (8) "Internal Revenue Code" has the meaning provided in 15-30-2101.

7 (9) "Project" means:

8 (a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal  
9 Revenue Code, 26 U.S.C. 54(d)(2);

10 (b) a community renewable energy project as defined in 69-3-2003(4)(a); ~~or~~

11 (c) an alternative renewable energy source as defined in 15-6-225; or

12 (d) a renewable energy system as defined in [section 2]."

13  
14 **NEW SECTION. Section 13. Notification to tribal governments.** The secretary of state shall send  
15 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
16 Chippewa tribe.

17  
18 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 9] are intended to be  
19 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 9].

20 - END -