

SENATE BILL NO. 245

INTRODUCED BY M. MCNALLY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNMENTS TO ADOPT COMMERCIAL
5 PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS THROUGH DISTRICTS TO PROMOTE THE USE OF
6 RENEWABLE ENERGY SYSTEMS AND ENERGY CONSERVATION MEASURES; ESTABLISHING THE
7 COMMERCIAL PROPERTY-ASSESSED CLEAN ENERGY ACT OF MONTANA; PROVIDING FOR THE
8 ADMINISTRATION OF COMMERCIAL PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS THROUGH
9 THE MONTANA FACILITY FINANCE AUTHORITY AND LOCAL GOVERNMENTS; PROVIDING COMMERCIAL
10 PROPERTY-ASSESSED CLEAN ENERGY PROGRAM PLANNING REQUIREMENTS; ESTABLISHING
11 PROCEDURES FOR LOCAL GOVERNMENT DEVELOPMENT OF COMMERCIAL PROPERTY-ASSESSED
12 CLEAN ENERGY PROGRAMS; ALLOWING FOR VOLUNTARY ASSESSMENTS; PRESCRIBING THE
13 POWERS AND DUTIES OF THE GOVERNING BODIES OF LOCAL GOVERNMENTS AND THE AUTHORITY
14 RELATED TO COMMERCIAL PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS; ESTABLISHING
15 CONTRACT AND LABOR REQUIREMENTS FOR CONTRACTS; ALLOWING LOCAL GOVERNMENTS TO
16 JOINTLY ESTABLISH COMMERCIAL PROPERTY-ASSESSED CLEAN ENERGY PROGRAMS; AMENDING
17 SECTIONS 5-11-210, 90-7-202, AND 90-7-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
20

21 NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Commercial
22 Property-Assessed Clean Energy Act of Montana".
23

24 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 8], unless the context requires
25 otherwise, the following definitions apply:

- 26 (1) "Authority" means the Montana facility finance authority created in 2-15-1815.
- 27 (2) "Commercial property-assessed clean energy program" or "program" means a program established
28 in accordance with [sections 1 through 8].
- 29 (3) "District" means a district that is established under [sections 1 through 8] 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 (4) "Energy conservation measure" means a permanent cost-effective energy improvement fixed to real
3 property and intended to decrease energy or water consumption and demand including a product, device, or
4 interacting group of products or devices on the customer's side of the meter that uses energy technology to
5 generate electricity, provide thermal energy, or regulate temperature. The term includes but is not limited to:

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

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

10 (c) automated energy control systems;

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

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

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

14 (g) energy recovery systems;

15 (h) daylighting systems;

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

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

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

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

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

24 (6) "Governing body" means the legislative authority of a local government.

25 (7) "Local government" means a county, city, town, or a consolidated city-county.

26 (8) (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 (9) "Real property" means a privately owned commercial or industrial facility, covered multifamily housing
2 accommodation as defined in 49-2-305(6), or agricultural property.

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

5 (11) "Renewable energy" has the meaning provided in 15-24-3102.

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

10
11 **NEW SECTION. Section 3. Duties of authority related to community property-assessed clean**
12 **energy program -- rulemaking.** (1) As resources allow, the authority shall provide administrative support to local
13 governments for the administration of the commercial property-assessed clean energy program and establish
14 a plan in accordance with [section 5].

15 (2) If the authority adopts rules in accordance with 90-7-202 to administer the commercial
16 property-assessed clean energy program, the authority shall consult with local and county governments and the
17 commercial lending industry, including bank and credit union representatives, on the content of the rules.

18 (3) The authority shall provide a report to the legislature in accordance with 5-11-210 describing the fees
19 related to the program, administrative costs, the number of properties that are part of a commercial
20 property-assessed clean energy program, and the scope of projects in the program on or before September 1:

21 (a) of 2022; and

22 (b) every 5 years after the report is initially provided in subsection (3)(a).

23
24 **NEW SECTION. Section 4. Program authorized -- contracts.** (1) In accordance with [sections 5 and
25 6], a governing body may establish a commercial property-assessed clean energy program and may create a
26 district or districts under the program.

27 (2) (a) The governing body may enter into a contract with a record owner of real property within a district
28 to finance one or more energy conservation projects on the real property included in a district in accordance with
29 [sections 1 through 8].

30 (b) The contract may provide for the repayment of the cost of an energy conservation project through

1 an assessment in accordance with [section 7] on real property. The financing to be repaid through assessments
2 must be provided by a third party.

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

7
8 **NEW SECTION. Section 5. Elements of program plan -- contract requirements.** (1) Prior to
9 establishing a program in accordance with [section 6], the authority shall prepare a program plan. Subject to
10 subsections (2) through (4), the program plan must include:

11 (a) provisions for marketing the program and providing participant education;

12 (b) the types of energy conservation projects that may be financed under the program;

13 (c) options for raising capital to finance energy conservation projects under the program. Options may
14 include but are not limited to owner-arranged financing from a commercial lender. If owner-arranged financing
15 is used, the governing body may impose an assessment pursuant to [section 7] and make payments to the
16 authority, and the authority will distribute those payments to the commercial lender.

17 (d) quality assurances and antifraud measures;

18 (e) minimum requirements for a contractor to complete an energy conservation project;

19 (f) clearly defined work standards for contractors;

20 (g) contractor management systems and procedures designed to monitor contractor performance and
21 to manage, track, and resolve consumer complaints; and

22 (h) a description of the proposed financial arrangement and contract terms between the local government
23 and record owners pursuant to subsection (3).

24 (2) (a) A program plan for energy conservation projects must include an energy analysis completed by
25 a third party to determine cost and energy savings.

26 (b) Energy savings calculations and analysis completed in accordance with subsection (2)(a) must be
27 completed by a licensed or certified building professional approved by the authority.

28 (c) When an energy conservation project is completed, the contractor who completed the project shall
29 submit written verification to the authority that the energy conservation project was properly installed and is
30 operating as intended.

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

3 (a) application, administration, or other program fees that will be charged to record owners participating
4 in the program that will be used to finance costs incurred by the authority, local government, or both as a result
5 of the program;

6 (b) a requirement that the record owner of real property subject to a mortgage or trust deed obtain written
7 consent from the mortgage holder, trust deed beneficiary, or loan servicer before participating in the program; and

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

13 (4) (a) Prior to a local government and a record owner for a commercial property-assessed clean energy
14 project entering into a contract under a program established pursuant to [section 6], the authority shall obtain
15 independent verification from the record owner that the record owner understands and accepts the terms of the
16 contract and shall make the verification available to the local government.

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

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

21 (5) The contract must include requirements that contractors and any subcontractors use a skilled and
22 trained workforce. Contracts signed must require contractors and subcontractors to give preference to the
23 employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the projects, if the
24 Montana residents have substantially equal qualifications to those of nonresidents.

25
26 **NEW SECTION. Section 6. Establishment of program.** (1) To establish a commercial
27 property-assessed clean energy program, a governing body shall:

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

29 (i) a statement of intent to establish a commercial property-assessed clean energy program describing
30 the role of the governing body and the role of the authority in administering the program;

- 1 (ii) the types of energy conservation projects that may be included in the program;
- 2 (iii) a reference to the program plan required by [section 5] and a location where the plan is available for
3 public inspection; and
- 4 (iv) 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 will meet the program plan requirements established by the authority in
10 [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 with record owners.
- 18 (2) A commercial property-assessed clean energy program may be changed by resolution of the
19 governing body. Adoption of the resolution must be preceded by a public hearing if required pursuant to
20 subsection (1)(c)(ii).
- 21
- 22 **NEW SECTION. Section 7. Assessments.** (1) (a) A local government may impose an assessment
23 under a commercial property-assessed clean energy program pursuant to a written contract with the record owner
24 of the real property to be assessed.
- 25 (b) The term of the assessment may not exceed the useful life of an energy conservation project paid
26 for by the assessment.
- 27 (2) Before entering into a contract with a record owner under a program, the local government shall verify
28 that:
- 29 (a) delinquent taxes, special assessments, or water or sewer charges are not due on the real property;
30 and

1 (b) delinquent assessments on the real property under a commercial property-assessed clean energy
2 program are not due.

3 (3) (a) An assessment imposed under a commercial property-assessed clean energy program, including
4 any interest on the assessment and any penalty, constitutes a program lien against the real property on which
5 the assessment is imposed from the date of the assessment until the assessment, including any interest or
6 penalty, is paid in full. The lien is for outstanding assessments only, runs with the real property, and has the same
7 priority and status as other property tax and assessment liens.

8 (b) A governing body has the same rights in the case of delinquency in the payment of an assessment
9 as it does with respect to delinquent property taxes. When the assessment, including any interest and penalty,
10 is paid, the lien must be removed from the real property.

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

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

16
17 **NEW SECTION. Section 8. Joint programs.** (1) A local government may join with another local
18 government or with any person by contract or otherwise to implement a commercial property-assessed clean
19 energy program in whole or in part.

20 (2) If a commercial property-assessed clean energy program is implemented jointly by two or more local
21 governments, a single public hearing held jointly by the local governments meets the requirements of [section
22 6].

23
24 **Section 9.** Section 5-11-210, MCA, is amended to read:

25 **"5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report"
26 means a written report required by law to be given to or filed with the legislature.

27 (2) ~~On~~ Except as provided in [section 3(3)], on or before September 1 of each year preceding the
28 convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in
29 writing, to the appropriate interim or statutory committee:

30 (a) the final title of the report;

- 1 (b) an abstract or description of the contents of the report, not to exceed 100 words;
- 2 (c) if the report is available electronically, its location on the internet; and
- 3 (d) a recommendation on how many paper copies of the report, if any, should be provided to the
4 legislature.
- 5 (3) After considering all of the information available about the report, including the number of legislators
6 requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall,
7 in writing, direct the reporting entity to provide a specific number of paper copies. The number of copies required
8 is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory
9 committee may require the reporting entity to mail the copies of the report.
- 10 (4) The appropriate interim or statutory committee may require that the report be submitted in an
11 electronic format that is usable on the legislature's current computer hardware or in a digital form.
- 12 (5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage,
13 distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of
14 this section may not accrue to the legislative services division.
- 15 (6) The executive director of the legislative services division shall cause to be prepared a list of all reports
16 required to be presented to the legislature from the list of titles received under subsection (2).
- 17 (7) The executive director shall, as soon as possible following a general election, provide to each
18 holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts
19 prepared pursuant to subsection (2)(b), and the location of electronic copies.
- 20 (8) The executive director of the legislative services division shall provide copies of reports requested
21 pursuant to subsection (7) to those members or members-elect by either requiring that copies be mailed pursuant
22 to subsection (3) or by delivering copies of the reports during the first week of the legislative session.
- 23 (9) The executive director of the legislative services division may keep as many copies of a report as are
24 necessary and discard the rest or return them to the agency.
- 25 (10) The procedure outlined in this section may also be used for a report required to be made to the
26 legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact
27 contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western
28 Interstate Nuclear Compact contained in 90-5-201.
- 29 (11) Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be
30 provided to the legislative services division as soon as the report is published. The legislative services division

1 shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the
2 legislative services division shall ensure that members of the state administration and veterans' affairs interim
3 committee and the legislative finance committee receive copies of the reports."

4

5 **Section 10.** Section 90-7-202, MCA, is amended to read:

6 **"90-7-202. Powers of authority.** The authority may:

7 (1) sue and be sued;

8 (2) have a seal;

9 (3) except as provided in [section 3(2)], adopt all procedural and substantive rules necessary for the
10 administration of this chapter;

11 (4) except as provided in subsection (20), issue bonds or incur other debt as described in this chapter,
12 including the issuance of notes or refunding bonds;

13 (5) except as provided in 17-6-308, invest any funds that are not required for immediate use, subject to
14 any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all
15 investment income from funds invested by the authority, less the cost for investment, must be deposited in an
16 enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;

17 (6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it
18 considers appropriate to carry out the purposes of this chapter;

19 (7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

20 (8) except as provided in subsection (20), issue bond anticipation notes or any other anticipatory financial
21 obligations to secure funding of eligible facilities;

22 (9) enter into agreements or make advance commitments to ensure repayments required by loan
23 agreements made by a lender. These agreements are subject to terms and conditions established by the
24 authority.

25 (10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities
26 from any funds;

27 (11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a
28 municipality, or any other source;

29 (12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the
30 state, a municipality, a private organization, or any other entity consistent with the exercise of any power under

1 this chapter;

2 (13) with regard to property:

3 (a) except as provided in subsection (20), acquire real or personal property or any right, interest, or

4 easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;

5 (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of property;

6 (c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or

7 custody;

8 (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,

9 including any equity or right of redemption;

10 (e) make any disposition by public or private sale, with or without public bidding;

11 (f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract,

12 or other agreement;

13 (g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in

14 lieu of foreclosure; and

15 (h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or

16 desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any agreement

17 with the holders;

18 (14) service, contract, and pay for the servicing of loans;

19 (15) provide general technical services in the analysis, planning, design, processing, construction,

20 rehabilitation, and management of eligible facilities whenever considered appropriate;

21 (16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification

22 of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of

23 any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment,

24 construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and

25 noteholders;

26 (17) collect reasonable interest, fees, and charges from participating institutions in connection with

27 making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and

28 other evidences of indebtedness. Except as provided in 17-6-308, the interest, fees, and charges must be

29 deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts

30 required to pay the costs of the authority, including operating and administrative expenses, reasonable

1 allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to
2 finance the costs of eligible facilities or to make grants for the purposes described in 90-7-211(2)(e).

3 (18) make loans pursuant to 17-6-308;

4 (19) establish program parameters for loan or grant approval by authority staff; ~~and~~

5 (20) perform its duties to administer commercial property-assessed clean energy programs in accordance
6 with [sections 1 through 8]. The authority's power is limited strictly to the administration of the commercial
7 property-assessed clean energy program in accordance with [sections 1 through 8], and the authority may not
8 provide financing, acquire real property, or issue bonds in its administration of the commercial property-assessed
9 clean energy program.

10 ~~(20)~~(21) perform any other acts necessary and convenient to carry out the purposes of this chapter."
11

12 **Section 11.** Section 90-7-211, MCA, is amended to read:

13 **"90-7-211. Necessary expenses -- fees.** (1) ~~All~~ Except as provided in [section 5(3)(a)], all expenses
14 of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under
15 the authority of this chapter. Liability may not be incurred by the authority beyond the extent to which money has
16 been provided under this chapter, except for the purposes of meeting the necessary expenses of initial
17 organization and operation and until the date that the authority derives money from funds provided under this
18 chapter. The authority may borrow money for necessary expenses of organization and operation. The borrowed
19 money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

20 (2) When an application is made to the authority by any participating institution for financial assistance
21 to provide for its eligible facilities, the application may be accompanied by an initial planning service fee in an
22 amount determined by the authority. The initial planning service fee may be included in the cost of the eligible
23 facilities to be financed. In addition to the initial fee, an annual planning service fee may be paid to the authority
24 by each participating institution in an amount determined by the authority. The annual planning service fee may
25 be paid on the dates or in installments that are satisfactory to the authority. The fees must be used for:

26 (a) necessary expenses to determine the need for eligible facilities in the area concerned, and to that
27 end, the authority may use recognized voluntary and official health planning organizations and agencies at local,
28 regional, and state levels;

29 (b) necessary administrative, operating, and financing expenses;

30 (c) reserves for anticipated future expenses or loan losses;

- 1 (d) loans to finance the costs of eligible facilities; and
- 2 (e) grants to institutions to assist in determining eligibility for or compliance with government programs.
- 3 (3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm,
- 4 partnership, association, or corporation for the furnishing of services and data for use by the authority in
- 5 determining the need for and location of any eligible facility for which application is being made or for other
- 6 services or surveys that the authority considers necessary to carry out the purposes of this chapter."

7

8 **NEW SECTION. Section 12. Notification to tribal governments.** The secretary of state shall send

9 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell

10 Chippewa tribe.

11

12 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 8] are intended to be

13 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 8].

14

15 **NEW SECTION. Section 14. Effective date.** [This act] is effective January 1, 2020.

16 - END -