

SENATE BILL NO. 245

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

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

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

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

(1) "Authority" means the Montana facility finance authority created in 2-15-1815.

(2) "Commercial property-assessed clean energy program" or "program" means a program established
in accordance with [sections 1 through 8].



1 (3) "District" means a district that is established under [sections 1 through 8] by a local government and
2 that lies within the local government's jurisdictional boundaries. A local government may create more than one
3 district under a program, and districts may be separate, overlapping, or coterminous.

4 (4) "Energy conservation measure" means a permanent cost-effective energy improvement fixed to real
5 property and intended to decrease energy or water consumption and demand including a product, device, or
6 interacting group of products or devices on the customer's side of the meter that uses energy technology to
7 generate electricity, provide thermal energy, or regulate temperature. The term includes but is not limited to:

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

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

12 (c) automated energy control systems;

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

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

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

16 (g) energy recovery systems;

17 (h) daylighting systems;

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

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

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

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

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

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

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

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

1 unincorporated joint ventures, or trusts.

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

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

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

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

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

12

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

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

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

23 (a) of 2022; and

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

25

26 **NEW SECTION. Section 4. Program authorized -- contracts.** (1) In accordance with [sections 5 and
27 6], a governing body may establish a commercial property-assessed clean energy program and may create a
28 district or districts under the program.

29 (2) (a) The governing body may enter into a contract with a record owner of real property within a district
30 to finance one or more energy conservation projects on the real property included in a district in accordance with

1 [sections 1 through 8].

2 (b) The contract may provide for the repayment of the cost of an energy conservation project through
3 an assessment in accordance with [section 7] on real property. The financing to be repaid through assessments
4 must be provided by a third party.

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

9

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

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

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

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

19 (d) quality assurances and antifraud measures;

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

21 (f) clearly defined work standards for contractors;

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

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

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

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

30 (c) When an energy conservation project is completed, the contractor who completed the project shall

1 submit written verification to the authority that the energy conservation project was properly installed and is
2 operating as intended.

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

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

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

10 (B) A REQUIREMENT THAT A CONTRACT BETWEEN THE GOVERNING BODY AND A RECORD OWNER IS INVALID AND
11 UNENFORCEABLE UNLESS THE HOLDER OF A MORTGAGE, TRUST INDENTURE BENEFICIARY, OR LOAN SERVICER PROVIDES
12 THE GOVERNING BODY WITH EACH OF THE FOLLOWING:

13 (I) AN EXECUTED SUBORDINATION AGREEMENT, PROPERLY NOTARIZED AND EXECUTED WITHIN 3 MONTHS PRIOR
14 TO THE APPLICATION FOR A CONTRACT;

15 (II) A RECORD OF THE SUBORDINATION AGREEMENT FROM THE OFFICE OF THE COUNTY CLERK AND RECORDER
16 IN THE COUNTY WHERE THE PROPERTY IS LOCATED;

17 (III) A SECRETARY'S CERTIFICATE OR SUBSTANTIALLY SIMILAR CERTIFICATION THAT THE PERSON WHO EXECUTED
18 THE SUBORDINATION AGREEMENT IS AUTHORIZED TO SIGN SUCH AN AGREEMENT ON BEHALF OF THE MORTGAGE HOLDER,
19 TRUST INDENTURE BENEFICIARY, OR LOAN SERVICER; AND

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

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

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

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

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

7
8 **NEW SECTION. Section 6. Establishment of program.** (1) To establish a commercial
9 property-assessed clean energy program, a governing body shall:

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

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

13 (ii) the types of energy conservation projects that may be included in the program;

14 (iii) a reference to the program plan required by [section 5] and a location where the plan is available for
15 public inspection; and

16 (iv) the time and place for a public hearing on the proposed program;

17 (b) hold a public hearing at which the public may comment on the proposed program and the program
18 plan required by [section 5]; and

19 (c) adopt a resolution establishing the program and setting the terms and conditions of the program,
20 including:

21 (i) how the governing body will meet the program plan requirements established by the authority in
22 [section 5]. To meet the requirement of this subsection (1)(c)(i), the resolution may incorporate a program plan
23 or an amended version of a program plan by reference.

24 (ii) a description of the aspects of the program that may be changed without a public hearing and the
25 aspects that may be changed only after a public hearing;

26 (iii) identification of an official authorized to enter into a program contract on behalf of the program with
27 entities providing funding for the program; and

28 (iv) identification of an official authorized to enter into a program contract on behalf of the governing body
29 with record owners.

30 (2) A commercial property-assessed clean energy program may be changed by resolution of the

1 governing body. Adoption of the resolution must be preceded by a public hearing if required pursuant to
2 subsection (1)(c)(ii).

3
4 **NEW SECTION. Section 7. Assessments.** (1) (a) A local government may impose an assessment
5 under a commercial property-assessed clean energy program pursuant to a written contract with the record owner
6 of the real property to be assessed.

7 (b) The term of the assessment may not exceed the useful life of an energy conservation project paid
8 for by the assessment.

9 (2) Before entering into a contract with a record owner under a program, the local government shall verify
10 that:

11 (a) delinquent taxes, special assessments, or water or sewer charges are not due on the real property;
12 and

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

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

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

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

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

28
29 **NEW SECTION. Section 8. Joint programs.** (1) A local government may join with another local
30 government or with any person by contract or otherwise to implement a commercial property-assessed clean

1 energy program in whole or in part.

2 (2) If a commercial property-assessed clean energy program is implemented jointly by two or more local
3 governments, a single public hearing held jointly by the local governments meets the requirements of [section
4 6].

5

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

7 **"5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report"
8 means a written report required by law to be given to or filed with the legislature.

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

12 (a) the final title of the report;

13 (b) an abstract or description of the contents of the report, not to exceed 100 words;

14 (c) if the report is available electronically, its location on the internet; and

15 (d) a recommendation on how many paper copies of the report, if any, should be provided to the
16 legislature.

17 (3) After considering all of the information available about the report, including the number of legislators
18 requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall,
19 in writing, direct the reporting entity to provide a specific number of paper copies. The number of copies required
20 is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory
21 committee may require the reporting entity to mail the copies of the report.

22 (4) The appropriate interim or statutory committee may require that the report be submitted in an
23 electronic format that is usable on the legislature's current computer hardware or in a digital form.

24 (5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage,
25 distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of
26 this section may not accrue to the legislative services division.

27 (6) The executive director of the legislative services division shall cause to be prepared a list of all reports
28 required to be presented to the legislature from the list of titles received under subsection (2).

29 (7) The executive director shall, as soon as possible following a general election, provide to each
30 holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts

1 prepared pursuant to subsection (2)(b), and the location of electronic copies.

2 (8) The executive director of the legislative services division shall provide copies of reports requested
3 pursuant to subsection (7) to those members or members-elect by either requiring that copies be mailed pursuant
4 to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

5 (9) The executive director of the legislative services division may keep as many copies of a report as are
6 necessary and discard the rest or return them to the agency.

7 (10) The procedure outlined in this section may also be used for a report required to be made to the
8 legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact
9 contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western
10 Interstate Nuclear Compact contained in 90-5-201.

11 (11) Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be
12 provided to the legislative services division as soon as the report is published. The legislative services division
13 shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the
14 legislative services division shall ensure that members of the state administration and veterans' affairs interim
15 committee and the legislative finance committee receive copies of the reports."

16

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

18 **"90-7-202. Powers of authority.** The authority may:

19 (1) sue and be sued;

20 (2) have a seal;

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

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

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

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

- 1 (7) participate with any financial institution in the purchase or guarantee of any loan or obligation;
- 2 (8) except as provided in subsection (20), issue bond anticipation notes or any other anticipatory financial
3 obligations to secure funding of eligible facilities;
- 4 (9) enter into agreements or make advance commitments to ensure repayments required by loan
5 agreements made by a lender. These agreements are subject to terms and conditions established by the
6 authority.
- 7 (10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities
8 from any funds;
- 9 (11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a
10 municipality, or any other source;
- 11 (12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the
12 state, a municipality, a private organization, or any other entity consistent with the exercise of any power under
13 this chapter;
- 14 (13) with regard to property:
- 15 (a) except as provided in subsection (20), acquire real or personal property or any right, interest, or
16 easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;
- 17 (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of property;
- 18 (c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or
19 custody;
- 20 (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,
21 including any equity or right of redemption;
- 22 (e) make any disposition by public or private sale, with or without public bidding;
- 23 (f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract,
24 or other agreement;
- 25 (g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in
26 lieu of foreclosure; and
- 27 (h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or
28 desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any agreement
29 with the holders;
- 30 (14) service, contract, and pay for the servicing of loans;

1 (15) provide general technical services in the analysis, planning, design, processing, construction,
2 rehabilitation, and management of eligible facilities whenever considered appropriate;

3 (16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification
4 of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of
5 any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment,
6 construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and
7 noteholders;

8 (17) collect reasonable interest, fees, and charges from participating institutions in connection with
9 making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and
10 other evidences of indebtedness. Except as provided in 17-6-308, the interest, fees, and charges must be
11 deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts
12 required to pay the costs of the authority, including operating and administrative expenses, reasonable
13 allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to
14 finance the costs of eligible facilities or to make grants for the purposes described in 90-7-211(2)(e).

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

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

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

22 ~~(20)~~(21) perform any other acts necessary and convenient to carry out the purposes of this chapter."
23

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

25 **"90-7-211. Necessary expenses -- fees.** (1) ~~All~~ Except as provided in [section 5(3)(a)], all expenses
26 of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under
27 the authority of this chapter. Liability may not be incurred by the authority beyond the extent to which money has
28 been provided under this chapter, except for the purposes of meeting the necessary expenses of initial
29 organization and operation and until the date that the authority derives money from funds provided under this
30 chapter. The authority may borrow money for necessary expenses of organization and operation. The borrowed

1 money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

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

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

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

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

13 (d) loans to finance the costs of eligible facilities; and

14 (e) grants to institutions to assist in determining eligibility for or compliance with government programs.

15 (3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm,
16 partnership, association, or corporation for the furnishing of services and data for use by the authority in
17 determining the need for and location of any eligible facility for which application is being made or for other
18 services or surveys that the authority considers necessary to carry out the purposes of this chapter."

19

20 NEW SECTION. **Section 12. Notification to tribal governments.** The secretary of state shall send
21 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
22 Chippewa tribe.

23

24 NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 8] are intended to be
25 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 8].

26

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

28

- END -