

1 SENATE BILL NO. 147

2 INTRODUCED BY M. MCNALLY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CAPITAL
5 ENHANCEMENT PROGRAMS TO PROMOTE ENERGY CONSERVATION MEASURES; AUTHORIZING
6 LOCAL GOVERNMENTS TO ADOPT COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS
7 PROGRAMS THROUGH DISTRICTS TO PROMOTE ENERGY CONSERVATION MEASURES;
8 ESTABLISHING THE COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS ACT OF
9 MONTANA; PROVIDING FOR THE ADMINISTRATION OF COMMERCIAL PROPERTY-ASSESSED CAPITAL
10 ENHANCEMENTS PROGRAMS THROUGH THE MONTANA FACILITY FINANCE AUTHORITY AND LOCAL
11 GOVERNMENTS; PROVIDING COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS
12 PROGRAM PLANNING REQUIREMENTS; ESTABLISHING PROCEDURES FOR LOCAL GOVERNMENT
13 DEVELOPMENT OF COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS;
14 ALLOWING FOR VOLUNTARY ASSESSMENTS; PRESCRIBING THE POWERS AND DUTIES OF THE
15 GOVERNING BODIES OF LOCAL GOVERNMENTS AND THE AUTHORITY RELATED TO COMMERCIAL
16 PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS; ESTABLISHING CONTRACT AND
17 LABOR REQUIREMENTS FOR CONTRACTS; ALLOWING LOCAL GOVERNMENTS TO JOINTLY
18 ESTABLISH COMMERCIAL PROPERTY-ASSESSED CAPITAL ENHANCEMENTS PROGRAMS;
19 PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 90-7-202 AND
20 90-7-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 NEW SECTION. Section 1. Short title. [Sections 1 through 8] may be cited as the "Commercial
25 Property-Assessed Capital Enhancements Act of Montana".

26
27 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 8], unless the context
28 requires otherwise, the following definitions apply:

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

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

4 (3) "District" means a district that is established under [sections 1 through 8] by a local government
5 and that lies within the local government's jurisdictional boundaries. A local government may create more than
6 one district under a program.

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

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

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

16 (c) automated energy control systems;

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

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

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

20 (g) energy recovery systems;

21 (h) daylighting systems;

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

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

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

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

28 (5) "Energy conservation project" means the installation or modification of an energy conservation

1 measure or the acquisition, installation, or improvement of a renewable energy system.

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

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

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

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

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

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

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

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

18

19 **NEW SECTION. Section 3. Duties of authority related to community property-assessed capital**
20 **enhancements program -- rulemaking.** (1) As resources allow, the authority shall provide administrative
21 support to local governments for the administration of the commercial property-assessed capital enhancements
22 program and establish a plan in accordance with [section 5].

23 (2) If the authority adopts rules in accordance with 90-7-202 to administer the commercial property-
24 assessed capital enhancements program, the authority shall consult with local and county governments and the
25 commercial lending industry, including bank and credit union representatives, on the content of the rules.

26 (3) The authority shall provide a report to the legislature in accordance with 5-11-210 describing the
27 fees related to the program, administrative costs, the number of properties that are part of a commercial
28 property-assessed capital enhancements program, and the scope of projects in the program:

1 (a) in 2024; and

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

3

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

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

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

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

17

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

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

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

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

27 (d) quality assurances and antifraud measures;

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

1 (f) clearly defined work standards for contractors;

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

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

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

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

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

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

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

18 (b) a requirement that a contract between the governing body and a record owner is invalid and
19 unenforceable unless the holder of a mortgage, trust indenture beneficiary, or loan servicer provides the
20 governing body with each of the following:

21 (i) an executed subordination agreement, properly notarized and executed within 3 months prior to
22 the application for a contract;

23 (ii) a record of the subordination agreement from the office of the county clerk and recorder in the
24 county where the property is located; and

25 (iii) a secretary's certificate or substantially similar certification that the person who executed the
26 subordination agreement is authorized to sign such an agreement on behalf of the mortgage holder, trust
27 indenture beneficiary, or loan servicer; and

28 (c) a model contract between a governing body and a record owner containing the terms and

1 conditions of financing and an assessment that meets the requirements of [section 7] under the program. The
2 model contract must include full disclosure of costs, including the effective interest rate of the assessment in
3 accordance with [section 7], any administrator fees, the estimated payment schedule, and the placement of a
4 lien on the real property.

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

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

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

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

17

18 **NEW SECTION. Section 6. Establishment of program.** (1) To establish a commercial property-
19 assessed capital enhancements program, a governing body shall:

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

21 (i) a statement of intent to establish a commercial property-assessed capital enhancements program
22 describing the role of the governing body and the role of the authority in administering the program;

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

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

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

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

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

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

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

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

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

12 (2) A commercial property-assessed capital enhancements program may be changed by resolution of
13 the governing body. Adoption of the resolution must be preceded by a public hearing if required pursuant to
14 subsection (1)(c)(ii).

15
16 **NEW SECTION. Section 7. Assessments.** (1) (a) A local government may impose an assessment
17 under a commercial property-assessed capital enhancements program pursuant to a written contract with the
18 record owner of the real property to be assessed.

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

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

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

25 (b) delinquent assessments on the real property under a commercial property-assessed capital
26 enhancements program are not due.

27 (3) (a) An assessment imposed under a commercial property-assessed capital enhancements
28 program, including any interest on the assessment and any penalty, constitutes a program lien against the real

1 property on which the assessment is imposed from the date of the assessment until the assessment, including
2 any interest or penalty, is paid in full. The lien is for outstanding assessments only, runs with the real property,
3 and has the same priority and status as other property tax and assessment liens.

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

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

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

12

13 **NEW SECTION. Section 8. Joint programs.** (1) A local government may join with another local
14 government or with any person by contract or otherwise to implement a commercial property-assessed capital
15 enhancements program in whole or in part.

16 (2) If a commercial property-assessed capital enhancements program is implemented jointly by two or
17 more local governments, a single public hearing held jointly by the local governments meets the requirements
18 of [section 6].

19

20 **Section 9.** Section 90-7-202, MCA, is amended to read:

21 **"90-7-202. Powers of authority.** The authority may:

22 (1) sue and be sued;

23 (2) have a seal;

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

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

28 (5) except as provided in 17-6-308, invest any funds that are not required for immediate use, subject

1 to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all
2 investment income from funds invested by the authority, less the cost for investment, must be deposited in an
3 enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;

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

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

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

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

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

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

16 (12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of
17 the state, a municipality, a private organization, or any other entity consistent with the exercise of any power
18 under this chapter;

19 (13) with regard to property:

20 (a) except as provided in subsection (20), acquire real or personal property or any right, interest, or
21 easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;

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

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

25 (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,
26 including any equity or right of redemption;

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

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

1 contract, or other agreement;

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

4 (h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or
5 desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any
6 agreement with the holders;

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

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

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

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

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

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

24 (20) perform its duties to administer commercial property-assessed capital enhancements programs in
25 accordance with [sections 1 through 8]. The authority's power is limited strictly to the administration of the
26 commercial property-assessed capital enhancements program in accordance with [sections 1 through 8], and
27 the authority may not provide financing, acquire real property, or issue bonds, other than as a conduit issuer of
28 bonds with the underlying obligations to be assigned on issuance, in its administration of the commercial

1 property-assessed capital enhancements program. Nothing in this subsection may be construed as limiting the
 2 ability of the authority to provide financial or other services otherwise allowed under this section to property-
 3 assessed capital enhancements programs.

4 ~~(20)~~(21) perform any other acts necessary and convenient to carry out the purposes of this chapter."
 5

6 **Section 10.** Section 90-7-211, MCA, is amended to read:

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

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

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

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

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

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

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

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

5
6 NEW SECTION. **Section 11. Notification to tribal governments.** The secretary of state shall send a
7 copy of [this act] to each federally recognized tribal government in Montana.

8
9 NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 8] are intended to be
10 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 8].

11

12 NEW SECTION. **Section 13. Effective date.** [This act] is effective January 1, 2022.

13

- END -