

1 SENATE BILL NO. 458

2 INTRODUCED BY K. BOGNER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FINANCING OF PUBLIC SAFETY AND RESILIENCY
5 IMPROVEMENT PROJECTS THROUGH COMMERCIAL PROPERTY-ASSESSED CAPITAL
6 ENHANCEMENTS PROGRAMS; AMENDING SECTIONS 90-4-1302, 90-4-1304, 90-4-1305, 90-4-1306, AND
7 90-4-1307, MCA; AND PROVIDING AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 90-4-1302, MCA, is amended to read:

12 **"90-4-1302. Definitions.** As used in this part, unless the context requires otherwise, the following
13 definitions apply:

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

15 (2) "Commercial property-assessed capital enhancements program" or "program" means a
16 program established in accordance with this part.

17 (3) "District" means a district that is established under this part by a local government and that lies
18 within the local government's jurisdictional boundaries. A local government may create more than one district
19 under a program.

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

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

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

- 1 (c) automated energy control systems;
- 2 (d) heating, ventilating, or air-conditioning and distribution system modifications or replacements;
- 3 (e) caulking, weather-stripping, or air sealing;
- 4 (f) replacement or modification of lighting fixtures to reduce the energy use of the lighting system;
- 5 (g) energy recovery systems;
- 6 (h) daylighting systems;
- 7 (i) installation or upgrades of electrical wiring or outlets to charge a motor vehicle that is fully or
- 8 partially powered by electricity;
- 9 (j) fuel source changes that result in cost savings;
- 10 (k) measures to reduce the usage of water or to increase the efficiency of water usage; and
- 11 (l) any other installation or modification of equipment, devices, or materials approved as a utility
- 12 cost-saving measure by the governing body.

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

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

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

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

17 (8) (a) "Person" means an individual, firm, partnership, association, corporation, unincorporated

18 joint venture, or trust that is organized, permitted, or existing under the laws of this state or any other state,

19 including a federal corporation, or a combination of individuals, firms, partnerships, associations, corporations,

20 unincorporated joint ventures, or trusts.

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

22 (9) "Public safety and resiliency improvement" means one or more fixed installations or

23 modifications to eligible commercial real property that are designed to improve a property's public safety or

24 resiliency by improving the eligible real property's:

25 (a) structural integrity for seismic events;

26 (b) indoor air quality;

27 (c) durability to resist wind, fire, and flooding;

28 (d) ability to withstand an electric power outage;

1 (e) stormwater control measures, including structural and nonstructural measures to mitigate
2 stormwater runoff; and

3 (f) firearm storage infrastructure for use by the public pursuant to a firearm hold agreement as
4 provided in 27-1-748.

5 (10) "Public safety and resiliency improvement project" means the installation or modification of a
6 public safety and resiliency improvement.

7 (9)(11) "Real property" means a privately owned commercial or industrial facility, covered multifamily
8 housing accommodation as defined in 49-2-305(6), or agricultural property.

9 (40)(12) "Record owner" means the person or persons possessing the most recent fee title as shown by
10 the records of the county clerk and recorder.

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

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

16
17 **Section 2.** Section 90-4-1304, MCA, is amended to read:

18 **"90-4-1304. Program authorized -- contracts.** (1) In accordance with 90-4-1305 and 90-4-1306, a
19 governing body may establish a commercial property-assessed capital enhancements program and may create
20 a district or districts under the program.

21 (2) (a) The governing body may enter into a contract with a record owner of real property within a
22 district to finance one or more energy conservation projects or public safety and resiliency improvement
23 projects on the real property included in a district in accordance with this part.

24 (b) The contract may provide for the repayment of the cost of an energy conservation project or
25 public safety and resiliency improvement project through an assessment in accordance with 90-4-1307 on real
26 property. The financing to be repaid through assessments must be provided by a third party.

27 (c) Financing may include the cost of materials and labor necessary for the installation or
28 modification of energy conservation projects or public safety and resiliency improvement projects, permit fees,

1 inspection fees, application and administrative fees, bank fees, and all other fees incurred by the record owner
2 for the energy conservation project or public safety and resiliency improvement project on a specific or pro rata
3 basis, as determined by the governing body."

4
5 **Section 3.** Section 90-4-1305, MCA, is amended to read:

6 **"90-4-1305. Elements of program plan -- contract requirements.** (1) Prior to establishing a
7 program in accordance with 90-4-1306, the authority shall prepare a program plan. Subject to subsections (2)
8 through (4), the program plan must include:

9 (a) provisions for marketing the program and providing participant education;
10 (b) the types of energy conservation projects or public safety and resiliency improvement projects
11 that may be financed under the program;
12 (c) options for raising capital to finance energy conservation projects or public safety and resiliency
13 improvement projects under the program. Options may include but are not limited to owner-arranged financing
14 from a commercial lender. If owner-arranged financing is used, the governing body may impose an assessment
15 pursuant to 90-4-1307 and make payments to the authority, and the authority will distribute those payments to
16 the commercial lender.

17 (d) quality assurances and antifraud measures;
18 (e) minimum requirements for a contractor to complete an energy conservation project or public
19 safety and resiliency improvement project;
20 (f) clearly defined work standards for contractors;
21 (g) contractor management systems and procedures designed to monitor contractor performance
22 and to manage, track, and resolve consumer complaints; and
23 (h) a description of the proposed financial arrangement and contract terms between the local
24 government and record owners pursuant to subsection (3).

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

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

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

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

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

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

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

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

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

19 (c) a model contract between a governing body and a record owner containing the terms and
20 conditions of financing and an assessment that meets the requirements of 90-4-1307 under the program. The
21 model contract must include full disclosure of costs, including the effective interest rate of the assessment in
22 accordance with 90-4-1307, any administrator fees, the estimated payment schedule, and the placement of a
23 lien on the real property.

24 (4) (a) Prior to a local government and a record owner for a commercial property-assessed capital
25 enhancements project entering into a contract under a program established pursuant to 90-4-1306, the
26 authority shall obtain independent verification from the record owner that the record owner understands and
27 accepts the terms of the contract and shall make the verification available to the local government.

28 (b) The contract must allow the record owner to cancel the contract within 3 business days of

1 signing the contract.

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

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

8

9 **Section 4.** Section 90-4-1306, MCA, is amended to read:

10 **"90-4-1306. Establishment of program.** (1) To establish a commercial property-assessed capital
11 enhancements program, a governing body shall:

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

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

15 (ii) the types of energy conservation projects or public safety and resiliency improvement projects
16 that may be included in the program;

17 (iii) a reference to the program plan required by 90-4-1305 and a location where the plan is
18 available for public inspection; and

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

20 (b) hold a public hearing at which the public may comment on the proposed program and the
21 program plan required by 90-4-1305; and

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

24 (i) how the governing body will meet the program plan requirements established by the authority
25 in 90-4-1305. To meet the requirement of this subsection (1)(c)(i), the resolution may incorporate a program
26 plan or an amended version of a program plan by reference.

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

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

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

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

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9 **Section 5.** Section 90-4-1307, MCA, is amended to read:

10 **"90-4-1307. Assessments.** (1) (a) A local government may impose an assessment under a
11 commercial property-assessed capital enhancements program pursuant to a written contract with the record
12 owner of the real property to be assessed.

13 (b) The term of the assessment may not exceed the useful life of an energy conservation project or
14 public safety and resiliency improvement project paid for by the assessment.

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

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

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

21 (3) (a) An assessment imposed under a commercial property-assessed capital enhancements
22 program, including any interest on the assessment and any penalty, constitutes a program lien against the real
23 property on which the assessment is imposed from the date of the assessment until the assessment, including
24 any interest or penalty, is paid in full. The lien is for outstanding assessments only, runs with the real property,
25 and has the same priority and status as other property tax and assessment liens.

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

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

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

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7 NEW SECTION. **Section 6. Effective date.** [This act] is effective October 1, 2025.

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