

1 SENATE BILL NO. 458  
2 INTRODUCED BY K. BOGNER

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."

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

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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;

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

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

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

(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.

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

(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:

(a) structural integrity for seismic events;

(b) indoor air quality:

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

(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           (10)(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."

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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."

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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.

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

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."

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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;

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.

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

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