

SB 4 - VERSION ADOPTED BY BOTH BODIES

2025 SESSION

25-0981

06/05

SENATE BILL **4**

AN ACT relative to commercial property assessed clean energy and resiliency (C-PACER).

SPONSORS: Sen. Innis, Dist 7; Sen. Reardon, Dist 15

COMMITTEE: Commerce

ANALYSIS

This bill replaces the energy efficiency and clean energy districts statute with a commercial property assessed clean energy and resiliency program.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Five

AN ACT relative to commercial property assessed clean energy and resiliency (C-PACER).

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Energy Efficiency and Clean Energy Districts; Definitions. RSA 53-F:1 is repealed and
2 reenacted to read as follows:

3 53-F:1 Definitions. In this chapter:

4 I. "Authority" means the New Hampshire business finance authority the administrator for
5 the program created by this chapter.

6 II. "Capital provider" means a private entity or its designee, successor, or assigns that
7 finances or refinances a qualifying improvement.

8 III. "C-PACER" means commercial property assessed clean energy or resiliency.

9 IV. "District" means an energy efficiency and clean energy district established under this
10 chapter.

11 V. "Eligible property" means real property located within the boundaries of the district,
12 whether zoned or used for residential, commercial, industrial, or other uses, excluding residential
13 property containing less than 5 dwelling units.

14 VI. "Financing agreement" means the agreement between a property owner and a capital
15 provider which governs the terms of financing between the parties, including the interest rate, term,
16 conditions of prepayment, and penalties and interest for late or delinquent payment.

17 VII. "Municipal program official" means a person designated by a municipality to liaison
18 with the program administrator and administer the municipality duties and responsibilities in
19 accordance with the administrative procedures set forth in the administrative agreement with the
20 authority.

21 VIII. "Municipality" means any city, town, or village district, or the designated
22 representative of the city, town, or village district.

23 IX. "Program" means the implementation and administration of C-PACER projects and
24 financings according to this chapter.

25 X. "Program administrator" means the authority or a third-party designated by the
26 authority to administer the program on its behalf.

27 XI. "Program guidebook" means a comprehensive document created by the authority
28 pursuant to this chapter, including appropriate guidelines for the program, specifications, approval
29 criteria, assessment documents, and other standard forms consistent with the administration of a
30 program under this chapter.

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1 XII. "Project application" means an application submitted to the program administrator to
2 demonstrate that a proposed project qualifies for special assessment financing pursuant to the
3 program guidebook.

4 XIII. "Qualifying improvement" means resiliency improvements, energy conservation and
5 efficiency improvements, clean energy improvements, or water conservation improvements.

6 (a) "Clean energy improvement" means the installation of any system on the property for
7 producing electricity for, or meeting heating, cooling, or water heating needs of the property, using
8 either renewable energy sources, combined heat and power systems, or district energy systems using
9 wood biomass (but not construction and demolition waste), waste heat, or natural gas. Such
10 improvements include, but are not limited to, solar photovoltaic, solar thermal, wood biomass, wind,
11 and geothermal systems, provided that, to be covered by an agreement with a property owner and
12 financed under this chapter, such improvements shall be qualifying improvements under RSA 53-
13 F:6; and

14 (b) "Energy conservation and efficiency improvement" means measures to reduce
15 consumption, through conservation or more efficient use, of electricity, fuel oil, natural gas, propane,
16 or other forms of energy on or off the property, including but not limited to air sealing, installation of
17 insulation, installation of heating, cooling, or ventilation systems meeting or exceeding ENERGY
18 STAR standards, building modifications to increase the use of daylighting, replacement of windows
19 with units meeting or exceeding ENERGY STAR standards, installation of energy controls or energy
20 recovery systems, and installation of efficient lighting equipment, provided that, to be covered by an
21 agreement with a property owner and financed under this chapter, all such improvements must be
22 permanently affixed to a building or facility that is part of the property and shall be qualifying
23 improvements under RSA 53-F:6; and

24 (c) "Resiliency improvement" means improvements that increase the resilience of a
25 property, including but not limited to air quality, snow and flood mitigation, energy storage and
26 microgrids, alternative vehicle charging infrastructure, and fire and wind resistance.

27 (d) "Water conservation improvement" means measures, equipment, or devices that
28 decrease the consumption of or demand for water, address safe drinking water or eliminate lead
29 from water used for drinking or cooking.

30 XIV. "Qualifying project" means a project application which has qualifying improvements
31 and has been approved by the program administrator.

32 XV. "Special assessment" means a special assessment within the meaning and subject to the
33 provisions of RSA 80:19, except as provided in RSA 53-F:8.

34 XVI. "Special assessment agreement" or "assessment agreement" means a voluntary
35 agreement of a property owner and a municipality to allow the municipality to place an assessment
36 on the owner's property to repay special assessment financing pursuant to this chapter.

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1 XVII. "Special assessment lien" or "lien" means a lien recorded in which the eligible property
2 is located to secure the special assessment, which assessment remains on the property until paid in
3 full.

4 2 Adoption by Municipality. Amend RSA 53-F:2, IV to read as follows:

5 IV. The language of the question shall designate ~~[an energy efficiency and clean energy]~~ **the**
6 district, which may cover all or a portion of the area within the municipality, or may designate all or
7 a portion of the area within the municipality as part of ~~[an energy efficiency and clean energy]~~ **a**
8 district that encompasses all or portions of multiple municipalities.

9 3 Authority. Amend RSA 53-F:3 to read as follows:

10 53-F:3 Authority. To achieve the public benefits of protecting the economic and social well-being
11 by reducing energy costs in the community and risks to the community associated with future
12 escalation in energy prices, and addressing the threat of global climate change, any municipality
13 which has adopted the provisions of this chapter and established an energy efficiency and clean
14 energy district may, upon a finding by the governing body of the municipality, after notice and
15 hearing, that the energy conservation and efficiency and clean energy improvements will serve the
16 public purposes as set forth in this chapter and not primarily be for the benefit of private persons or
17 uses even though such private benefits and uses may incidentally result, do the following:

18 I. ***The authority is designated by the legislature to administer the program for all***
19 ***municipalities within the state. The authority is authorized to, at its direction, contract***
20 ***with a third party, whether private or governmental, to manage the day-to-day***
21 ***administration of the program. Anticipated expenses for the administration of the***
22 ***program shall be borne by the owners of eligible properties participating in the program.***

23 II. A municipality which adopts this chapter shall thereafter be authorized to establish one
24 or more energy efficiency and clean energy districts. ***A municipality, at its discretion, may***
25 ***establish the district within the entirety of its jurisdictional boundaries.***

26 ~~[II.— Encourage private financing from individuals or institutions for qualifying~~
27 ~~improvements to eligible properties within the district and enter into agreements with those private~~
28 ~~lenders to administer the energy conservation and efficiency improvements or clean energy~~
29 ~~improvements program on their behalf, including evaluating eligible properties, supervising the~~
30 ~~improvements, arranging for the closing of the loans, collecting the special assessments, and~~
31 ~~assisting them with the exercise of their lienholder rights, provided that anticipated expenses for the~~
32 ~~administration of the program shall be borne by the owners of eligible properties participating in the~~
33 ~~program.]~~

34 III. ***A municipality may enter into an agreement with a property owner to impose a***
35 ***voluntary special assessment to repay the financing of qualified projects on commercial***
36 ***property located in a region.***

1 **III-a.** *An assessment may not be imposed to repay the financing of the purchase or*
2 *installation of products or devices not permanently affixed to commercial property.*

3 **III-b.** *A municipality may enter into an agreement to impose a voluntary special*
4 *assessment only after a project application is approved. The special assessment is created*
5 *through a written contract between the municipality and with the recorded property owner*
6 *of the commercial property or the property owner of a leasehold estate to be assessed.*

7 **III-c.** *Prior to entering into the written assessment contract, the property owner*
8 *must receive and furnish to the program administrator a written statement, executed by*
9 *each holder of a mortgage or deed of trust on the property securing indebtedness,*
10 *consenting to the assessment and indicating that the assessment does not constitute an*
11 *event of default under the mortgage or deed of trust.*

12 **III-d.** *To establish a C-PACER program under this chapter, the municipality shall*
13 *take action in the following order, and adopt a resolution that includes:*

14 **(a)** *A finding that the financing of qualified projects through special*
15 *assessments is a valid public purpose;*

16 **(b)** *A statement that the municipality intends to authorize direct financing*
17 *between property owners and capital providers as the means to finance qualified projects;*

18 **(c)** *A statement that the municipality intends to authorize special assessments,*
19 *entered into voluntarily by a property owner with the municipality by means of the written*
20 *assessment contract, as the means to repay the financing for qualified projects available to*
21 *property owners;*

22 **(d)** *A description of the types of qualified projects that may be subject to special*
23 *assessments;*

24 **(e)** *A description of the boundaries of the region;*

25 **(f)** *That administration of the program shall be by the authority or its designee;*
26 *and*

27 **(g)** *A statement identifying the appropriate municipal program official or*
28 *department responsible for executing the appropriate documentation for the imposition of*
29 *a special assessment.*

30 **III-e.** *The authority is authorized to impose fees and charges deemed necessary by*
31 *the authority for the purposes of administering the program. To the degree collected from*
32 *the property owner, the authority shall reimburse a municipality for actual expenses*
33 *incurred by the municipality in the performance of the municipalities' duties pursuant to*
34 *this chapter.*

35 ~~III.~~ **IV.** *Participate in state or federal programs providing support for municipal energy*
36 *efficiency and clean energy finance programs such as those authorized by this chapter.*

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1 ~~[IV.]~~ V. Enter into agreements with owners of eligible property in which the owners
2 ~~[consent]~~ **have consented** to make energy conservation and efficiency improvements or clean energy
3 improvements to their properties and to have the municipality include a special assessment to pay
4 for such improvements on their property tax bills, their bills for water or sewer service or another
5 municipal service, or separate bills, provided that such agreements shall not affect the tax liability
6 or municipal services charges of other participating or nonparticipating property owners in the
7 district.

8 ~~[V.] Collect charges from participating owners of eligible properties to cover the cost of~~
9 ~~administration for the district.~~

10 ~~VI. Otherwise administer a program for promoting and financing energy efficiency and clean~~
11 ~~energy improvements within a district in accordance with this chapter, enter into an agreement with~~
12 ~~a public or private entity to administer such a program on its behalf in accordance with this chapter,~~
13 ~~and enter into an agreement with one or more other municipalities to share services and otherwise~~
14 ~~cooperate in the administration of a district or districts in accordance with this chapter.~~

15 ~~VII. Adoption of a clean energy efficiency and clean energy district shall include a~~
16 ~~commercial property assessed clean energy (C PACE) model implemented according to the most~~
17 ~~recent U.S. Department of Energy (DOE) released best practice guidelines for PACE financing~~
18 ~~programs.]~~

19 4 Agreements With Property Owners. Amend RSA 53-F:4 to read as follows:

20 53-F:4 Agreements With Property Owners.

21 I.(a) A municipality may make an assessment under this chapter only pursuant to an
22 agreement entered into with the free and willing consent of the owner of an eligible property to
23 which the assessment applies. In the case of any eligible property with multiple owners, an
24 agreement under this chapter shall be signed by all owners **or the owner or owners designated by**
25 **appropriate documentation to sign on behalf of the property.**

26 ~~[(b) An agreement with an owner of eligible property shall provide that the owner shall~~
27 ~~contract for qualifying improvements with one or more qualified contractors, purchase materials to~~
28 ~~be used in making qualified improvements, or both, and that, upon submission of documentation~~
29 ~~required by the municipality, the municipality shall disburse funds to those contractors and vendors~~
30 ~~in payment for the qualifying improvements or materials used in making qualified improvements.~~
31 ~~An agreement with a property owner shall require that the property owner report post installation~~
32 ~~energy use data for program evaluation purposes over a period determined by the municipality.]~~

33 ~~[(e)]~~(b) The agreement shall stipulate that all funding for the qualifying improvements
34 shall be made by private lenders **pursuant to a separate financing agreement between the**
35 **lender and the property owner**, and that the ~~[loan]~~ **financing is** ~~[will be evidenced by a note and]~~
36 secured by a ~~[mortgage]~~ **special assessment lien** on the eligible property. The agreement shall
37 include a payment schedule showing the term over which payments will be due on the assessment,

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1 the frequency with which payments will be billed and the amount of each payment, and the annual
2 amount due on the assessment. The obligations of the agreement and ~~[loan]~~ **lien** will run with the
3 eligible property. If the property is sold, the new owner shall automatically assume the obligations
4 of the agreement, note, and ~~[mortgage]~~ **subject to the special assessment lien** and shall be subject
5 to all liability related to such obligations. Upon full payment of the amount of the special
6 ~~[assessments]~~ **assessment lien**, including all outstanding interest and charges and any penalties
7 that may become due, the municipality shall provide the then participating property owner with a
8 written statement certifying that ~~[the obligations of the agreement and the loan have been satisfied~~
9 ~~and]~~ the special ~~[assessments have]~~ **assessment lien has** been paid in full and shall record a
10 discharge of the ~~[mortgage]~~ **lien** from the private lender.

11 II. The ~~[municipality]~~ **assessment agreement** shall disclose to the owners of eligible
12 property participating in the program the risks associated with their participation, including risks
13 related to their failure to make payments and the risk of enforcement ~~[of property tax or special~~
14 ~~assessment liens under RSA 53-F:8]~~ **by power of sale under RSA 479.**

15 ~~[III. At least 30 days prior to entering into an agreement with a municipality under this~~
16 ~~chapter, the owner of eligible property shall provide to the holders of any existing mortgages on the~~
17 ~~property notice of his or her intent to enter into the agreement.]~~

18 ~~[IV]~~ **III.** The municipality shall ~~[file]~~ **execute** a notice of the assessment **and lien, and an**
19 **assignment of notice of assessment and lien** under this chapter for recording in the county
20 registry of deeds. The notice shall consist of the following statement or its substantial equivalent:
21 "This property is subject to a special assessment related to the installation of qualifying ~~[cost-~~
22 ~~effective energy conservation and efficiency improvements or clean energy improvements]~~ under
23 RSA 53-F."

24 ~~[V]~~ **IV.** Any personal or business financial information provided to a municipality or an
25 entity administering a program under this chapter on behalf of a municipality by a participating
26 property owner or potential participating property owner shall be **considered** confidential, ~~[and~~
27 ~~shall not be disclosed to any person except as required to administer the program and only on a~~
28 ~~need-to-know basis]~~ **commercial, or financial information under RSA 91-A:5.**

29 5 Eligibility of Property Owners. Amend RSA 53-F:5 to read as follows:

30 53-F:5 Eligibility of Property Owners.

31 I. A municipality may enter into an agreement under this chapter only with the legal owner
32 of eligible property.

33 II. Prior to entering into an agreement with an owner of eligible property, the municipality
34 shall determine that all property taxes and any other assessments levied with property taxes are
35 current~~[and have been current for 3 years or the owner's period of ownership, whichever is less;]~~
36 **and** that there are no involuntary liens such as mechanic's liens on the property **in excess of**
37 **\$10,000 and which are not removed at the time of the close of the financing transaction.** [;

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1 and that no notices of default or other evidence of property-based debt delinquency have been
2 recorded during the past 3 years or the property owner's period of ownership, whichever is less. The
3 municipality shall adopt additional criteria, appropriate to property-assessed clean energy finance
4 programs. The municipality shall determine whether any mortgages or liens of record exist in the
5 registry of deeds on the property, whether they are current in the obligations, and whether the total
6 debt to equity ratio specified by the private lender will be met. If any such mortgage or lien exists,
7 the municipality shall notify each such mortgagee or lienholder in writing that a private lender is
8 considering making a loan secured by a municipal lien pursuant to the provisions of this chapter and
9 request the consent of each such mortgagee or lienholder to the making of such loan.]

10 *II-a. A property may be eligible for financing if otherwise qualified improvements*
11 *were completed and operational no more than 36 months prior to submission of the*
12 *application to the program administrator. Waivers to the 36-month requirement may be*
13 *granted in the sole discretion of the program administrator.*

14 *III.* Each mortgagee or lienholder shall have the right to determine in its sole discretion
15 whether or not it will consent to such [loan] **financing**. [If all of the mortgagees or lienholders of
16 record elect to consent,] The consents shall be in writing and recorded with the [municipal lien]
17 **notice of assessment** in the registry of deeds. The legal effect of having all consents shall be that
18 the municipal lien shall not be extinguished in the event of a foreclosure **or tax foreclosure** or
19 sheriff's sale by the mortgagee or lienholder as provided in RSA 53-F:8. *Further, any provision of*
20 *a deed of trust, mortgage, or any other agreement between a consenting lienholder and a*
21 *property owner providing for the acceleration of any payment under the deed of trust,*
22 *mortgage, or agreement solely as the result of entering into an agreement to finance an*
23 *assessment is not enforceable; however, a holder or loan servicer may increase the monthly*
24 *amount held in escrow as may be required to annually pay the assessment. And the*
25 *mortgage holder shall remit such amounts in the manner that property taxes are escrowed*
26 *and remitted.*

27 *IV. The term of repayment shall not exceed 30 years.* [If all of the mortgagees or
28 lienholders of record do not consent, but the private lender determines that it will proceed in making
29 such loan, then in the event of a foreclosure or sheriff's sale by a mortgagee or lienholder, the
30 municipal lien shall be extinguished.]

31 6 Qualifying Improvements. RSA 53-F:6 is repealed and reenacted to read as follows:

32 53-F:6 Qualifying Improvements.

33 I. The authority shall establish a C-PACER application and review process to review and
34 evaluate project applications for C-PACER financing and prescribe the form and manner of the
35 application. Under the application, an applicant shall demonstrate:

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1 (a) That the project provides a benefit to the public, in the form of energy or water
2 resource conservation, reduced public health costs and/or risk, or reduced public emergency response
3 cost and/or risk.

4 (b) For an existing building:

5 (1) Where energy or water usage improvements are proposed, an energy analysis by
6 a licensed engineering firm or engineer, or other qualified professional listed in the program
7 guidebook, stating that the proposed qualified improvements will either result in more efficient use
8 or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of
9 renewable sources of energy or water, or

10 (2) Where renewable energy is proposed, an engineering study showing that the
11 improvements are feasible; or

12 (3) Where resilience improvements are proposed, certification by a licensed
13 professional engineer stating that the qualified improvements will result in improved resilience.

14 (c) For new construction, certification by a licensed professional engineer or engineering
15 firm stating that the proposed qualified improvements will enable the project to exceed the energy
16 efficiency or water efficiency or renewable energy or water usage or resilience requirements of the
17 current building code.

18 II.(a) The principal amount of any financing, excluding interest, shall not exceed 35 percent
19 of the appraised real property value, as stabilized or as complete, or the actual cost of installing
20 renewable energy systems, energy efficiency improvements, water efficiency improvements and
21 resiliency improvements, including the costs of necessary equipment, materials, and labor, financing
22 costs, ancillary costs, the costs of each related energy or water audit or feasibility study, and the cost
23 of verification of such renewable energy system and energy efficiency, water efficiency, and resiliency
24 improvements.

25 (b) The financing for assessments imposed may also include but is not limited to:

26 (1) Permit fees;

27 (2) Inspection fees;

28 (3) Lender fees;

29 (4) Program application and administrative fees;

30 (5) Project development and engineering fees;

31 (6) Interest reserves;

32 (7) Capitalized interest, in an amount determined by the owner of the commercial
33 property and the third-party providing financing under this section; and

34 (8) Any other fees or costs incurred by the property owner incident to the
35 installation, modification, or improvement on a specific or pro rata basis.

36 III. The recording of all documents under this section may be performed by the municipality
37 or their designee. A municipality's duties in a program shall include the:

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1 (a) Timely execution of the written assessment contract between the property owner and
2 the municipality, by a duly authorized official, as well as execution of the municipality notice of
3 assessment and C-PACER lien; and

4 (b) Execution of the assignment of the assessment agreement and the notice of
5 assessment and C-PACER lien to the capital provider.

6 IV. The authority and any municipality, its officers, and employees, shall not be liable at law
7 and equity for any actions taken in pursuant of this section, except for gross and willful misconduct.
8 Neither the members of the authority's board of directors, nor any officer or employee of the
9 authority shall be personally liable in ordinary negligence under this chapter. The state shall
10 indemnify a board member or officer or employee of the authority for expenses related to defense
11 against an ordinary negligence action. Neither the state nor the authority nor any officer or
12 employee of either of them shall be subject to any liability for actions taken to protect the interests of
13 the state, the authority, or any owner of the authority's bonds, provided that such actions are not
14 reckless or wanton.

15 V. After an approved project is completed, an applicant shall provide to the authority
16 written verification, as defined in the program guidebook, stating that the qualified project was
17 properly completed and is operating as intended.

18 7 Financing Terms. RSA 53-F:7 is repealed and reenacted to read as follows:

19 53-F:7 Financing Terms.

20 I. Prior to entering into a special assessment agreement, the municipality shall receive from
21 the program administrator certification that the proposed eligible improvements, eligible property
22 and property owner qualify for financing pursuant to the program.

23 II. Upon receiving certification of approval from the program administrator, the
24 municipality shall:

25 (a) Execute the assessment agreement; and

26 (b) Execute the written notice of assessment and lien, prepared by the administrator,
27 which shall be recorded in the records of the office of the county register of deeds of the county in
28 which the property is located. The notice required under this subparagraph shall contain:

29 (1) The amount of the assessment;

30 (2) The legal description of the property;

31 (3) The name of each property owner;

32 (4) A copy of the written assessment agreement;

33 (5) The date on which the lien was created;

34 (6) The principal amount of the lien; and

35 (7) The term of the lien.

36 (c) The municipality, or its designee, may assign the recording of executed assignment of
37 the notice of assessment and lien.

1 III. A special assessment that meets the requirements of RSA 53-F:5 and any interest or
2 penalties on the assessment:

3 (a) Is a first and prior lien against the commercial property on which the assessment is
4 imposed, from the date on which the notice of special assessment is recorded until the assessment,
5 interest, or penalty is paid; and

6 (b) Has the same priority status as a lien for any other ad valorem tax, except that it
7 shall be junior to any lien for property tax or other taxes or assessments by the municipality;

8 (c) The lien runs with the land, and that portion of the assessment under the assessment
9 contract that is not yet due may not be accelerated or eliminated by foreclosure of a property tax lien
10 or any foreclosure under state law.

11 IV. The proposed arrangements for financing a qualified project may authorize the property
12 owner to:

13 (a) Directly purchase the related equipment and materials for the installation or
14 modification of a qualified improvement; or

15 (b) Contract directly, including through lease, power purchase agreement, or other
16 service contract, for the related equipment and materials used in the installation or modification of a
17 qualified improvement.

18 8 Priority; Collection and Enforcement. RSA 53-F:8 is repealed and reenacted to read as follows:

19 53-F:8 Priority; Collection and Enforcement.

20 I. The municipality shall be responsible for all billing, collection, and enforcement of the
21 special assessment and lien, provided however that the municipality may delegate such
22 responsibilities to any outside third party approved by the program administrator and further
23 deemed acceptable to the municipality.

24 II. Under this section, delinquent installments shall incur interest and penalties as specified
25 in the financing agreement between the property owner and capital provider. Enforcement of a
26 delinquent installment by a capital provider shall be enforced with the provisions of paragraph III
27 and shall follow the procedures under RSA 479, including the power of sale, except that assessments
28 not yet due may not be accelerated or eliminated by foreclosure of the past due amounts of the lien.
29 Any outstanding and delinquent property taxes at the time of the enforcement action shall be
30 satisfied along with the delinquent amounts of the special assessment lien.

31 III. Neither the state nor any county nor any municipality nor any program administrator
32 may use public funds to fund or repay any financing or lien between a capital provider and property
33 owner except to the degree funds are received from the project expressly for such a purpose. No
34 section under this chapter shall be interpreted to pledge, offer, or encumber the full faith and credit
35 of the state, county, program administrator, or a municipality, nor shall any municipality pledge,
36 offer, or encumber its full faith and credit for any lien amount through a program.

37 9 Effective Date. This act shall take effect January 1, 2026.