



**MONTANA  
DEPARTMENT OF  
ADMINISTRATION**

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**State Financial Services Division**  
Greg Gianforte, Governor  
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# **2021 COMPLIANCE SUPPLEMENT FOR COUNTIES**

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DATE: March 2022

TO: Independent Auditors and Other Users of the Compliance Supplement for Audits of Montana Local Government Entities

RE: Additions/Revisions to the Compliance Supplement for Audits of Montana Local Government Entities – 2021 Legislature

### **2021 COMPLIANCE SUPPLEMENT UPDATE**

Below is a schedule of our most recent revisions to the Compliance Supplement for Audits of Montana Local Government Entities (*Supplement*). Many of these revisions reflect legislation passed by the 2019 Montana Legislature. Some of the revisions, however, reflect recent concerns and questions and do not necessarily result from recent legislation. We have also made changes in style and format that should not affect your audit programs. Significant revisions to the *Supplement* are highlighted in grey to assist you in updating your audit compliance programs.

The *Supplement* can be found on our website at [https://sfsd.mt.gov/LGSB/Audit-Financial-Review-Resources/4\\_ComplianceSupplement/](https://sfsd.mt.gov/LGSB/Audit-Financial-Review-Resources/4_ComplianceSupplement/).

If you have any questions or comments regarding the *Supplement*, please contact our office at any time.

Best Regards,

Local Government Services  
State Financial Services Division  
Montana Department of Administration

<b>CURRENT REVISION</b>	<b>DESCRIPTION OF CHANGES</b>
<b>COUNTY (CO)</b>	
<b>CO01 – General Topics</b>	<b>Legislative Changes – pgs. 3, 9</b>
<b>CO02 – Budgets</b>	<b>Legislative Changes and State Rate Change – pgs. 10, 11, 18</b>
<b>CO03.1 – Revenues</b>	<b>Legislative Changes – pgs. 6, 8, 9, 10, 13, 14, 16, 17, 18, 19, 20, 24, 28, 31, 34, 36, 39</b>
<b>CO03.2 – Motor Vehicle Fees, Taxes, &amp; Distribution Schedule</b>	<b>Legislative Changes – pgs. 3, 4, 5, 6, 7, 12</b>
<b>CO04 – Cash &amp; Investments</b>	<b>No Changes</b>
<b>CO05 – Claims &amp; Warrants</b>	<b>Federal Rate Change – pg. 5</b>
<b>CO06 – Procurement, Bid Letting, &amp; Contracts</b>	<b>Legislative Changes – pgs. 2, 4</b>
<b>CO07 – Payroll &amp; Employee Benefits</b>	<b>Legislative Changes – pgs. 7, 26</b>
<b>CO08 – Long-Term Debt</b>	<b>Legislative Changes – pgs. 4, 18, 19</b>
<b>CO09 – Meetings</b>	<b>No Changes</b>
<b>CO10 – Property Tax</b>	<b>Legislative Changes – pg. 2</b>
<b>CO11 – Rural Special Improvement Districts (RSID)</b>	<b>Legislative Changes – pgs. 15, 16</b>
<b>CO12 – Business Improvement Districts (BID)</b>	<b>No Changes</b>
<b>CO13 – Multijurisdictional Service Districts</b>	<b>No Changes</b>
<b>CO14 – County Offices &amp; Boards</b>	<b>Legislative Changes – pgs. 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 26</b>
<b>CO15 – Tax Sales, Redemptions, &amp; Tax Deeds</b>	<b>Legislative Changes – pgs. 4, 7, 8, 9, 10, 11</b>
<b>CO16 – County Collections &amp; Remittances</b>	<b>No Changes</b>
<b>CO17 – Special Districts</b>	<b>Legislative Changes – pgs. 3, 4, 5, 7, 8, 14, 20, 21</b>
<b>CO18 – Tax Increment Financing (TIF)</b>	<b>Legislative Changes – pgs. 2, 3, 4, 5, 6, 7</b>



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**GENERAL TOPICS**

REVISION JANUARY 2022

REF: CO01

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## **GENERAL/SELF-GOVERNMENT POWERS**

**County Powers:** A county has the powers specified in Title 7, MCA or in special statutes and has powers that are necessarily implied from those expressed powers.  
MCA 7-1-2101

A county has power to: (1) sue and be sued; (2) purchase and hold lands within its limits; (3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers; (4) make orders for the disposition or use of its property that the interests of its inhabitants require; and (5) subject to 15-10-420, levy and collect taxes for public or governmental purposes.  
MCA 7-1-2103

A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.  
MCA 7-1-2104

**General Powers:** A local government unit without self-government powers (i.e., a general power government) has powers provided or implied by law. The powers of incorporated cities and towns and counties must be liberally construed.  
Article XI, Section 4, of the Montana Constitution

**Self-Government Powers:** A local government adopting a self-government charter may exercise any power, and may provide any services or perform any functions, not prohibited by the Montana Constitution, law, or charter.  
Article XI, Section 6, of the Montana Constitution; MCA 7-1-101 & 102

**Ordinance or Resolution:** The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution.  
MCA 7-1-104 & 105

**Prohibitions:** A local government with self-government powers is prohibited from exercising the powers listed at MCA 7-1-111 and MCA 7-1-112. Also, a local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation. The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.  
MCA 7-1-111 to 113

**Mandatory Provisions:** A listing of mandatory provisions that a local government with self-government powers is subject to is found at MCA 7-1-114. Included in this list is “any law regulating the budget, finance, or borrowing procedures and powers of local governments”.  
MCA 7-1-114

## **ORDINANCES AND RESOLUTIONS**

### **Ordinances:**

**General Provisions:** An ordinance must be in a form prescribed by resolution of the governing body, and may not contain more than one comprehensive subject. Effective May 7, 2021: An ordinance may not compel a private business to deny a customer of the private business access to the premises or access to goods or services, deny a customer of a private business the ability to access goods or services provided by the private business unless the customer is under a public quarantine order, or bring any retributive action against a private business owner for noncompliance with such a resolution or ordinance. An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies must be made available to the public. After passage and approval, all ordinances must be signed by the presiding officer of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances. No ordinance shall be effective until 30 days after second and final adoption, and may provide for a delayed effective date.

MCA 7-5-103 & 105

**Exception for emergency:** In the event of an emergency, the governing body may waive the second reading. The ordinance shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. It shall be effective on passage and approval and shall remain effective for no more than 90 days.

MCA 7-5-104

**Veto Power:** The chief executive (as defined by 7-5-101) may be allowed, by the plan of government, to veto an ordinance.

MCA 7-5-106

**Register of Ordinances and Codification:** There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval. [Note: There is an exception for codes (e.g., building codes, electrical codes, etc.) adopted by reference – see MCA 7-5-108 for discussion.] At 5-year intervals, appropriate ordinances shall be compiled into a uniform code and published. Recodification is not effective until approved by the governing body.

MCA 7-5-107

**Penalties for Violation of Ordinances:** A local government may fix penalties for the violation of an ordinance that do not exceed a fine of \$500 or 6 months' imprisonment or both.

MCA 7-5-109

There are two exceptions to this general rule, relating to (1) a violation of an ordinance related to the implementation of the Federal Water Pollution Control Act (see MCA 7-5-109(2)), and (2) a violation of a "social host" ordinance.

MCA 7-5-4209

### **Resolutions:**

**General Provisions:** A resolution must be in a form prescribed by resolution of the governing body. Effective May 7, 2021: A resolution may not compel a private business to deny a customer

of the private business access to the premises or access to goods or services, deny a customer of a private business the ability to access goods or services provided by the private business unless the customer is under a public quarantine order, or bring any retributive action against a private business owner for noncompliance with such a resolution or ordinance. Resolutions may be submitted and adopted at a single meeting of the governing body. After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body. Resolutions are immediately effective unless a delayed effective date is specified.

MCA 7-5-121 & 123

## **COUNTY CLASSIFICATION & TAXABLE VALUATION**

REMINDER: The 2011 Legislature eliminated the concept of county classifications and replaced any references to county classifications in the Code with a taxable valuation amount or population amount.

## **PROVIDING NOTICE**

Whenever a county is required to give notice by publication, publication must be in a newspaper meeting the following qualifications:

MCA 7-1-2121(1)

**Qualified Newspaper:** The newspaper must be (i) of general circulation; (ii) published at least once a week; (iii) published in the county where the hearing or other action will take place; and (iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes the detail listed at MCA 7-1-2121(3)(iv). **Note:** A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.

MCA 7-1-2121(3)

In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.

MCA 7-1-2121(4)

**Exception - Posting:** In a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

MCA 7-1-2121(2)

**Time & Contents of Notice:** The notice must be published twice, with at least 6 days separating each publication, and must contain: (a) the date, time, and place of the hearing or other action; (b) a brief statement of the action to be taken; (c) the address and telephone number of the person who may be contacted for further information; and (d) any other information required by the specific section requiring notice by publication.

MCA 7-1-2121(6) & (7)

If the newspaper fails to publish a second notice, the county must be considered to have met these requirements as long as the county submitted the required information prior to the submission deadline and the notice was posted in three public places in the county that were designated by resolution and, if the county has an active website, was posted on the county's website at least 6 days prior to the hearing or other action.

MCA 7-1-2121(10)

**Notice by Mail:** Whenever a county is required to give notice of a hearing or other official act by mail, the requirements may be met by US mail: (a) at the first-class rate; (b) by certified mail; or (c) mailing the notice at the bulk rate instead of first class if notice is to be given by mail to all electors or residents of the affected local government unit.

MCA 7-1-2122

**Posting Information:** The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board. When posting is required, a copy of the document must be placed on the posting board, and a copy must be available at the office of the county clerk and recorder.

MCA 7-1-2123

## **INVENTORY OF TOOLS, MACHINERY & EQUIPMENT**

**Biennial Inventory:** The county commissioners must biennially prepare and file with the county clerk and recorder an inventory of all county tools, machinery and equipment.

MCA 7-8-2111

**Loan or Lease:** Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition.

MCA 7-8-2112

**Use by County Attorney:** Many County Attorneys in the State also have private practices. The use of county equipment for the County Attorney's private practice is allowed only through a written agreement between the county and the County Attorney leasing the equipment for private business purposes.

AGO #10 & #20, Vol. 46

## **EMPLOYEE BOND COVERAGE**

All county officers and employees must be bonded for the faithful performance of all official duties required by law. A county may have individual or blanket bonds.

MCA 2-9-701



The amount of the bond must be based on the amount of money or property handled by the employee and the opportunity for defalcation.

MCA 2-9-702

Bonds purchased by the board of county commissioners for county officers and employees must be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state, or by a self-insurance pool insuring counties as authorized by 2-9-211.

MCA 2-9-703

The premiums for all surety company bonds shall be a proper charge against the budgets of the county general fund or against the budget or budgets of those county funds where the officer or employee renders service.

MCA 2-9-704

## **RECORDS RETENTION & DISPOSITION**

**Note:** For more information on records retention schedules and records disposal procedures, go to <https://sosmt.gov/records/local/>

Upon order of the board of county commissioners and with the written approval of the State local government records destruction subcommittee, provided for in 2-6-1202, a county officer may destroy records that have met the retention period contained in the local government records retention and disposition schedules and that are no longer needed by the office.

MCA 7-5-2132

A local government public record more than 10-years old may not be destroyed without first being offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public. Notice must be provided to these entities at least 60 days prior to disposal of the public record.

MCA 2-6-1205

Claimed records must be given to entities in the order of priority as listed above, and all expenses for the removal of claimed records must be paid by the entity claiming the records. In addition, the local government records committee, established in 2-6-1201, shall establish procedures by which public records must be offered and claimed pursuant to this section and shall maintain a central registry of the entities described above who are interested in receiving notice of the potential destruction of public records pursuant to this section.

MCA 2-6-1205

## **ACCOUNTING AND FINANCIAL REPORTING**

**BARS Chart of Accounts:** The Department of Administration, Local Government Services (LGS), shall prescribe the general methods and details of accounting for the receipt and

disbursement of all money belonging to local government entities and shall establish the general methods and details of accounting as provided in 2-7-504. All counties, cities, and towns shall utilize the chart of accounts prescribed by the Department in the budgetary, accounting, and reporting system (BARS) for Montana cities, towns, and counties.

ARM 2.4.401; MCA 7-6-611(1), MCA 2-7-504

**Annual Financial Report:** The governing body or managing or executive officer of a county shall ensure that a financial report is made every year. The financial report must cover the preceding fiscal year, be in a form prescribed by the LGS Bureau, and be completed within 6 months of the end of the reporting period.

MCA 2-7-503(1), MCA 7-6-611(2)

The county clerk shall compile and present to the governing body of the county the annual financial report provided for in 7-6-611(2).

MCA 7-6-612(2)(b)

**Penalty and Public Notice:** The Local Government Services Bureau has the authority to impose a \$75 penalty on local governments, and to provide public notice, if annual financial reports (AFRs) or audit reports are delinquent by more than 180 days.

MCA 2-7-517; ARM. 2.4.403

**10% Penalty for Late AFR or Late Payment of Filing Fee:** The Local Government Services Bureau has the authority to impose a late payment penalty on local governments if the annual financial report (AFR) is not filed within 6 months of the end of the fiscal year OR if the annual financial report filing fee is not paid within 60 days of the due date of the AFR. The late penalty will be equal to 10% of the minimum or required filing fee for each month or portion of a month that the AFR or filing fee is delinquent.

MCA 2-7-517; ARM 2.4.404

**Notification of Creation of Special Districts:** The governing body of each county shall notify the LGS Bureau in writing, on a form prescribed by the Bureau, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county.

MCA 7-6-611(3)

**Other Reports:** The chief executive or governing body of a county may require any elected or appointed local government official or employee to: (a) maintain new or additional financial records; (b) perform new or additional financial reconciliations; and (c) submit new or additional financial reports.

MCA 7-6-612(1)

**Failure to file reports and audits or resolve findings:** If a local government entity fails to file an annual financial report with the department as required by 2-7-503(1), to complete and submit an audit or financial review to the department as required by 2-7-503(3), or to resolve significant audit findings or implement corrective measures as required by 2-7-515(3) within 2 years of the applicable deadlines, a person identified in subsection (2) of this section who has received a written determination from the department under 2-7-524(3)(c) or (4)(b) may bring a cause of

action against the local government entity for failure to comply with the local government entity's fiduciary requirements.

MCA 2-7-523(1)

**Failure to adopt or submit an annual operation budget:** If a local government entity fails to adopt or submit an annual operating budget as required by Title 7, chapter 6, part 40, within 2 years of the applicable deadline, a person identified in subsection (2) of this section who has received a written determination from the department under 7-6-4038(3)(c) or (4)(b) may bring a cause of action against the local government entity for failure to comply with the local government entity's fiduciary requirements.

MCA 7-6-4037(1)

### **COMPENSATED ABSENCES LIABILITY FUND**

A board of county commissioners may establish a compensated absence liability fund for the purpose of paying for any accumulated amount of sick leave and vacation leave that a county employee is entitled to upon termination of employment with the county.

MCA 7-5-2150(1)

The compensated absence liability fund may be used only for the purpose provided above. The fund may receive money from any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.

MCA 7-5-2150(2) & (3)

The maximum amount in the fund may not exceed the amount necessary to pay for accumulated sick leave and accumulated vacation leave of county employees on June 30 of the prior fiscal year.

MCA 7-5-2150(4)

**BARS Fund #3200** has been designated for this purpose. Only the compensated absences liability for employees paid from governmental funds/functions should be accounted for within this fund. The compensated absences liability for employees of enterprise funds should NOT be accounted for or paid from this fund.

### **LOCAL GOVERNMENT AS AN INTERNET PROVIDER**

A county may act as an internet services provider only:

- (a) if no private internet services provider is available within the county's jurisdiction;
- (b) if the county provided services prior to July 1, 2001; or
- (c) when providing advanced services that are not otherwise available from a private internet services provider within the county's jurisdiction.

MCA 2-17-603(2)

If a private internet services provider elects to provide internet services in a jurisdiction where a county is providing internet services, the private internet services provider shall inform the county in writing at least 30 days in advance of offering internet services. Upon receiving notice, the county shall notify its subscribers within 30 days, and may choose to discontinue providing internet services within 180 days of the notice.

MCA 2-17-603(2)(c) & (3)

A county may (a) offer electronic government services to the general public, (b) acquire access to the internet from a private internet services provider in order to offer electronic government services to the general public, or (c) Effective April 30, 2021: provide funding for broadband service infrastructure projects consistent with the provisions of Chapter 401, Laws of 2021.

MCA 2-17-603(4)

A county is encouraged to publish its requirements for internet services and to use, to the maximum extent possible, private internet services providers to deliver internet services to the public.

MCA 2-17-604

## **ELECTRONIC GOVERNMENT SERVICES**

**Convenience Fee:** A county may charge a convenience fee and may allow county departments to collect the convenience fee on selected electronic government services in order to recover the costs of providing those services.

MCA 7-5-2133

**Exception:** Electronic records accessible from the office of the clerk may be stored at a separate location as long as those records are available for public inspection free of charge.

MCA 7-5-2133 & 2131(2)

A person who makes payments to a local government entity by credit card or similar means, as discussed below, may be required to pay a convenience fee of up to 3% of the amount of the payment. The local government entity shall deposit the convenience fees collected in the appropriate fund. Generally, the most appropriate fund would be the County General Fund.

MCA 7-6-617(3)

**Payment by Credit Card:** A local government entity may accept payment by credit card, debit card, charge card, or other commercially acceptable means from a person making payment of taxes or fees. If payment is made in this manner, the tax or fee liability is not discharged until the local government receives payment or credit from the institution responsible for making the payment or credit. Upon receipt of the payment or credit, the amount is considered paid on the date on which the charge was made by the person paying the tax or fee.

MCA 7-6-617(1) & (2)(a)

Upon notice of nonpayment, the local government entity may charge the person who attempted the payment of the tax or fee an amount not to exceed the costs of processing the claim for

payment of the tax or fee. The amount that the local government entity charges must be added to the tax or fee due and collected in the same manner as the tax or fee due.

MCA 7-6-617(2)(b)

The local government entity may negotiate and enter into agreements with and pay required fees to financial institutions or credit card companies as necessary to facilitate implementation of the above. Fees paid to a financial institution or credit card company must be paid from an appropriate fund. [Generally, the most appropriate fund would be the County General Fund.]. A local government entity may enter into cooperative agreements with state agencies as necessary to carry out these provisions.

MCA 7-6-617(4) & (5)

## **RED FLAGS RULE**

In order to combat the growing problem of identity theft, the Federal Trade Commission (FTC) issued the “Red Flags” Rule which originally applied to all “creditors” with “covered accounts” (such as utility accounts - water, sewer or electricity, and other operations that defer payment for services on a recurring basis). F.A.Q. on the FTC website indicated that cities operating utilities that regularly bill customers after they’ve received services met the definition of “creditor” under the Rule. The rules required that covered entities have in place written programs to identify, detect and respond to patterns, practices or specific activities - known as “Red Flags” - that could indicate identity theft. **However, the Red Flag Program Clarification Act of 2010 revised the definition of creditor, so that it appears that cities operating utilities may no longer qualify as creditors under the Rule. See the current website: <http://business.ftc.gov/privacy-and-security/red-flags-rule>**

## **UNCLAIMED PROPERTY**

Title 70, Chapter 9, Part 8, MCA, pertaining to the Uniform Unclaimed Property Act provides that any property that is presumed abandoned, whether located in this or another state, is subject to the custody of the State of Montana. Property is presumed to be abandoned if it is unclaimed by the apparent owner during the time specified in MCA 70-9-803. **MCA 70-9-802(14)(b) provides that the provisions of the Uniform Unclaimed Property Act are not applicable to property held by a local government entity.**

## **CITIZENS’ RIGHT TO KNOW**

**Access to public information -- safety and security exceptions.**

- (1) Except as provided in subsection (2), every person has a right to examine and obtain a copy of any public information of this state.
- (2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the

information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

MCA 2-6-1003

**Exceptions:** The following documents may be withheld from public viewing:

A library record or portion thereof, except in response to a written request of the person identified in that record or in response to an order issued by a court. Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

MCA 22-1-1103

Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources, although statistical information compiled from burial site records must be made available to the general public.

MCA 22-3-807

In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint or the issuing of such attachment until after the filing of return of service of attachment.

MCA 27-18-111

Adoption papers and records.

MCA 42-6-101

## **RULES OF CONDUCT FOR PUBLIC OFFICERS AND EMPLOYEES**

A public officer or a public employee may not:

- (a) Use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes. A listing by a public officer or employee in the electronic directory for marketing of Montana businesses of any product created outside of work is not in violation of this provision, although the officer or employee may not make arrangements for the listing in the electronic directory during work hours.
- (b) Engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties (**Note:** This restriction does not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.);

- (c) Assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;
- (d) Assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency (**Note**: this provision not applicable to a member of a board, commission, council, or committee unless the member is also a full-time public employee);
- (e) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent (unless participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131) (**Note**: This restriction does not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.);
- (f) Solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor;
- (g) Use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is authorized by law or is properly incidental to another activity required or authorized by law, such as the function of an elected public officer or the officer's staff in the normal course of duties (see further discussion of this restriction at MCA 2-2-121(3) & (4));
- (h) Participate in a proceeding when an organization, other than an organization or association of local government officials, of which the officer or employee is an officer or director is involved in a proceeding before the employing agency that is within the scope of the officer's or employee's job duties; or attempting to influence a local, state, or federal proceeding in which the officer or employee represents the local government; MCA 2-2-121(5)
- (i) Engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization of local government officials of which the officer or employee is a member, while performing the officer's or employee's job duties. This provision does not prohibit a public officer or employee from performing charitable fundraising activities if approved by the officer's or employee's supervisor or authorized by law.  
MCA 2-2-121(6)

MCA 2-2-121

A public officer or employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

MCA 2-2-105(3)

**Disclosure:** A public officer or employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

MCA 2-2-131

See further discussion of rules of conduct and ethical requirements for public officials and employees at MCA 2-2-104 & 105.

## **EMPLOYEE INCENTIVE AWARD PROGRAM**

A governing body may develop and administer an employee incentive award program to appropriately recognize and monetarily reward local government employees in a timely manner for: (a) suggestions or inventions that contribute to the efficiency, economy, or other improvement of local government by reducing costs of governmental operations; or (b) participation in or successful completion of a program designed to improve employee health or enhance employee safety.

MCA 7-4-501(1) & 505(1)

**Amount of Award:** An award to an individual under this part may not exceed \$50 in value.

MCA 7-4-501(2)

**Exceptions:** An employee may not be eligible for an incentive award if the employee's suggestion or invention directly relates to the employee's assigned duties and responsibilities unless the proposal warrants special recognition as determined by the governing body. Also, suggestions or inventions may not be considered for awards if they relate to: (i) personnel grievances; (ii) classification and pay of positions; (iii) matters recommended for study or review; and (iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.

MCA 7-4-505(2)



## **ACQUISITION AND SALE OF PERSONAL AND REAL PROPERTY**

The reference list below is MCA applicable to the sale of personal and real property:

### General

- 7-8-101 - Authorization to transfer property between certain governmental entities
- 7-8-102 - Authorization to deed county land to other governmental entities
- 7-8-105 - Authorization to dispose of certain property in possession of local law enforcement
- 7-8-2214 - Appraisal required for certain sales
- 7-8-2215 - Procedure to challenge appraised value
- 7-8-2218 - Procedure if property not sold at public auction

### Personal Property

- 7-8-2201 - Authorization for county to obtain personal property
- 7-8-2211 - Authorization to sell and exchange county property
- 7-8-2212 - Notice of sale and public auction required for certain sales
- 7-8-2213 - Terms of sale
- 7-8-2216 - Sale of county property to school district
- 7-8-2217 - Procedure for sale of property of lesser value

### Real Property

- 7-8-2501 - Purposes of part
- 7-8-2513 - Appraisal of land required -- exception -- challenge -- restrictions
- 7-8-2514 - Reservations of interest by county
- 7-8-2515 - Apportionment and distribution of revenues from land
- 7-8-2519 - Acquisition of real property
- 7-8-2520 - Appraisal required for certain purchases of real property or conservation easements
- 7-8-2521 - Authorization to sell real property -- resolution required -- contents of resolution -- hearing required
- 7-8-2522 - Exchange or donation of real property -- appraisal required
- 7-16-2324 - Sale, lease, or exchange of dedicated park lands
- 76-3-621 - Park dedication requirement.



# COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES

## BUDGETS

REVISION JANUARY 2022

REF: CO02

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## **GENERAL**

**Local government defined:** For purposes of the Local Government Budget Act (Title 7, Chapter 6, Part 40, MCA), a “local government” is defined as a consolidated city-county or a county or an incorporated city or town.

MCA 7-6-4002 & MCA 7-6-602

**Budget supplied to State:** A local government shall submit a complete copy of the final budget together with a statement of tax levies to the Department of Administration by the later of October 1 or 60 days after receipt of taxable values from the Department of Revenue. The county clerk and recorder shall make this submission. The local government shall use standard budget forms prescribed by the Department of Administration or may use an alternative budget format acceptable to the Department.

MCA 7-6-4003

**Prescribed Fund Structure:** Local government budgets must conform to the fund structure prescribed by the Department of Administration (i.e., The county’s accounting structure must follow the chart of accounts for the Budgetary, Accounting, and Reporting System (BARS) for Montana Cities, Towns and Counties.).

MCA 7-6-4004

**Failure to adopt or submit an annual operation budget:** If a local government entity fails to adopt or submit an annual operating budget as required by Title 7, chapter 6, part 40, within 2 years of the applicable deadline, a person identified in subsection (2) of this section who has received a written determination from the department under 7-6-4038(3)(c) or (4)(b) may bring a cause of action against the local government entity for failure to comply with the local government entity's fiduciary requirements.

MCA 7-6-4037(1)

## **EXPENDITURES LIMITED TO APPROPRIATIONS**

Local government officials may not make a disbursement or an expenditure or incur an obligation in excess of the total appropriations for a fund.

MCA 7-6-4005

Money may not be disbursed, expended, or obligated except pursuant to an appropriation for which working capital is or will be available.

MCA 7-6-4006(2)

**Note:** The *oil and natural gas accelerated tax fund* must be financially administered as a nonbudgeted fund under the provisions of Title 7, Chapter 6, Part 23, MCA. That section of law, however, was repealed, and the Local Government Budget Act does not otherwise include provisions nonbudgeted funds.

MCA 15-36-326

**Also**, the *electrical generation impact fund* must be financially administered as a nonbudgeted fund under the provisions of the Local Government Budget Act, which, as noted above, contains no provision for nonbudgeted funds.

MCA 15-24-3007

A local government official who violates the preceding requirement is liable for the amount of the excess disbursement, expenditure, or obligation personally. The subsequent claims approval process may not be considered as the making of a disbursement or an expenditure or as incurring an obligation and does not otherwise limit or mitigate the local government official's personal liability.

MCA 7-6-4005

The governing body, each county official, and the district courts are limited to the amount of appropriations and by the classifications in the annual appropriation resolution provided for in 7-6-4030 when making disbursements or expenditures or incurring liabilities. (**Exceptions to this limitation** are discussed below: 7-6-4006 (adjustment/amendment of appropriations), 7-6-4011 (appropriation of bond proceeds), 7-6-4012 (fee-based appropriations), 7-6-4015 (payments for judgments), and 7-6-4032 (emergency expenditures).

MCA 7-6-4033

## **APPROPRIATIONS – ADJUSTMENTS/AMENDMENTS**

Appropriations may be adjusted according to procedures authorized by the governing body for:

- a. debt service funds for obligations related to debt approved by the governing body;
- b. trust funds for obligations authorized by trust covenants;
- c. any fund for federal, state, local, or private grants and shared revenue accepted and approved by the governing body;
- d. any fund for special assessments approved by the governing body;
- e. the proceeds from the sale of land;
- f. any fund for gifts or donations; and
- g. money borrowed during the fiscal year.

MCA 7-6-4006(3)

**Note:** Hard Rock Mining Impact budget authority – If a payment is requested or received after the adoption of the local government's budget for the fiscal year in which the payment is to be expended, the governing body of the local government may by a majority vote amend its budget to provide for the receipt and expenditure of the payment.

MCA 90-6-323

The governing body may amend the budget during the fiscal year by conducting public hearings at regularly scheduled meetings. Budget amendments providing for additional appropriations must identify the fund reserves, unanticipated revenue, or previously unbudgeted revenue that will fund the appropriations.

MCA 7-6-4006(4)

### **APPROPRIATION OF BOND PROCEEDS**

The authorization of bonds by the electors or the governing body constitutes the appropriation of the bond proceeds for the purpose for which the bonds are authorized.

MCA 7-6-4011

### **FEE-BASED BUDGETS – ADJUSTABLE APPROPRIATIONS**

In its final budget resolution, the governing body may authorize adjustments to appropriations funded by fees throughout the budget period. Adjustable appropriations are:

- (a) proprietary fund appropriations; or
- (b) other appropriations specifically identified in the local government's final budget resolution as fee-based appropriations.

MCA 7-6-4012(1)

Adjustments of fee-based appropriations must be:

- (a) based upon the cost of providing the services supported by the fee; and
- (b) fully funded by the related fees for services, fund reserves, or nonfee revenue such as interest.

MCA 7-6-4012(2)

### **RESTRICTION WHEN LEVY REQUIRES VOTER APPROVAL**

If an expenditure is to be financed from a tax levy required to be authorized and approved at an election, the expenditure may not be made or an obligation may not be incurred against the expenditure until the tax levy is authorized and approved.

MCA 7-6-4014

### **PRELIMINARY ANNUAL OPERATING BUDGET**

The county clerk and recorder shall prepare and submit the county's preliminary annual operating budget.

MCA 7-6-4020(1) & (3)(c)

**Budget proposals:** Before June 1 of each year, the county clerk and recorder shall notify the county commission and each board, office, “regional resource authority”, or official that they are required to file preliminary budget proposals for their component of the total county budget.

MCA 7-6-4020(3)(a)

**Component budgets** must be submitted to the clerk and recorder before June 10th or on a date designated by the county commission and must be submitted on forms provided by the county clerk and recorder. Component budget responsibilities include but are not limited to:

- a. The county surveyor or any special engineer shall compute road and bridge component budgets and submit them to the county commission.
- b. The county commission shall submit road and bridge component budgets.
- c. The county treasurer shall submit debt service component budgets.
- d. The county commission shall submit component budgets for construction or improvements to be made from new general obligation debt.

MCA 7-6-4020(3)(b) & (d)

**Minimum elements of preliminary budget:** The preliminary annual operating budget for each fund must include, at a minimum:

- a. listing of all revenue and other resources for the prior budget year, current budget year, and proposed budget year;
- b. a listing of all expenditures for the prior budget year, the current budget year, and the proposed budget year. All expenditures must be classified under one of the following categories:
  - (1) salaries and wages;
  - (2) operations and maintenance;
  - (3) capital outlay;
  - (4) debt service; or
  - (5) transfers out.
- c. a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.
- d. a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;
- e. financial data on current and future debt obligations;
- f. schedules or summary tables of personnel or position counts for the prior budget year, current budget year, and proposed budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the local government. The listing of positions, salaries, and benefits is not required to be a part of the budget document.
- g. all other estimates that fall under the purview of the budget.
- h. The preliminary annual operating budget for each fund for which the local government will levy an ad valorem property tax must include the estimated amount to be raised by the tax.

MCA 7-6-4020(4) & (5)

**Notice of preliminary or amended budget:** The governing body shall cause a notice of a public hearing on the preliminary or amended budget to be published. The publication requirements for a county must conform to the provisions of 7-1-2121 (See CO01-General Topics). The notice must:

- a. provide that the governing body has completed its preliminary annual budget for the ensuing fiscal year or intends to amend its annual budget;
- b. state that the budget or budget amendment has been placed on file and is open to inspection in the county office designated in the notice;
- c. designate the date, time, and place of the meeting at which the governing body will meet for approving a final budget or amended budget and making appropriations; and
- d. state that any taxpayer or resident may appear at the meeting and be heard for or against any part of the proposed budget or budget amendment.

MCA 7-6-4021

**Public hearing on preliminary or amended budget:** The governing body shall hold a hearing in accordance with the notice given pursuant to 7-6-4021 (above). Local government officials shall attend the budget hearing to answer questions on their proposed budgets if called upon by the governing body, taxpayer or resident. The hearing may be continued from day to day and must be concluded and the budget finally approved and adopted by resolution by the later of the first Thursday after the first Tuesday in September or within 30 calendar days of receiving certified taxable values from the department of revenue.

MCA 7-6-4024

## **FINAL BUDGET & RESOLUTION**

The governing body may amend the preliminary budget after the public hearing and after considering any public comment. The amended budget constitutes the final budget, and must be balanced so that appropriations do not exceed the projected beginning balance plus the estimated revenue of each fund for the fiscal year.

MCA 7-6-4030

**Final budget resolution:** The governing body shall adopt the final budget by resolution. The resolution must:

- (a) authorize appropriations to defray the expenses or liabilities for the fiscal year; and
- (b) establish legal spending limits at the level of detail in the resolution (i.e., fund, function, etc.).

MCA 7-6-4030(3)

The **effective date of the resolution** is July 1 of the fiscal year, even if the resolution is adopted after that date. (MCA 7-6-4030) A local government may receive and expend money between July 1 of the fiscal year and the date the final budget resolution is adopted.

MCA 7-6-4025

## **BUDGET AMENDMENT PROCEDURES**

The annual budget appropriations may be amended as provided in 7-6-4006(3) & 4012.

**Transfer of appropriations:** The final budget resolution may authorize the governing body or a designated official to transfer appropriations between items within the same fund.

MCA 7-6-4031

**Overall increase in appropriation authority:** A public hearing is required for an overall increase in appropriation authority. **Exceptions** to this general rule are:

- a. When the governing body authorizes procedures for adjusting appropriations for specific purposes (MCA 7-6-4006(3))
- b. Appropriation of bond proceeds (MCA 7-6-4011)
- c. Fee-based budgets (MCA 7-6-4012)
- d. Payments for judgments (MCA 7-6-4015)
- e. Emergency expenditures (MCA 7-6-4032)
- f. Emergencies under Title 10, Chapter 3, MCA (Disaster and emergency services)

### **EMERGENCY EXPENDITURES**

Emergency budget appropriations must be adopted by two-thirds of the members of a governing body who are present at the meeting. These expenditures are limited to and must be charged to the adopted emergency budget appropriations.

MCA 7-6-4032

**Note:** The governing body may submit the question of funding emergency warrants at an election as provided by law.

### **DETERMINATION OF FUND REQUIREMENTS – PROPERTY TAX LEVY**

After determining the final budget, the governing body shall determine the property tax levy needed for each fund by:

- a. adding the total of appropriations (authorized expenditures) for the budget year;
- b. adding an additional amount (subject to the cash reserves limitation discussed below) as a reserve to meet expenditures made from the fund during the months of July to November of the next fiscal year;
- c. subtracting the working capital; and
- d. subtracting the total estimated revenue, other than the property tax levy, for the budget year.

MCA 7-6-4034(1)

**Note:** However, the tax levy is capped by the provisions of MCA 15-10-420. See further below.

It is against the policy of the law to raise taxes faster than the money is likely to be needed. In the absence of statutory authority, a tax cannot be levied for the sole purpose of accumulating funds in the public treasury, such as for remote or future contingencies which may never arise, nor can



it be levied in excess of the amount required for the purpose for which it is levied, with the intention of using the excess for another purpose.

Rogge v. Petroleum County (1938)

**Authorized reserve:** After deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants, the amount that may be added as a reserve to any county fund may not exceed one-third ( $\frac{1}{3}$ ) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year.

MCA 7-6-4034(2)

### **APPROVAL OF & FIXING THE TAX LEVY**

**Governing body approval and exemptions:** The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body. However, except for a port authority created under Title 7, chapter 14, part 11 MCA, the taxes, revenue, or fees legally pledged for the payment of debt - or for the operations of a regional resource authority are not subject to approval by the governing body.

MCA 7-6-4035

The governing body shall fix the tax levy for each taxing jurisdiction within the county:

- a. by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values;
- b. after the approval and adoption of the final budget; and
- c. at levels that will balance the budgets as provided in 7-6-4034

MCA 7-6-4036

**Note:** The Department of Revenue is required to submit the certification of taxable values by the first Monday in August. Upon the request of a taxing authority, the DOR shall provide an *estimate* of the total taxable value by the second Monday in July.

MCA 15-10-202

Each levy:

- a. must be made in the manner provided by 15-10-201. MCA 15-10-201 provides that the board of county commissioners shall make and fix every levy in mills and tenths and hundredths of mills.
- b. is subject to 15-10-420 – Procedure for Calculating Levy

MCA 7-6-4036

**Note:** Certain levies are identified in 15-10-420 that are exempted from the provisions of 15-10-420.

## **TIME-LINE FOR MILL LEVY REPORTING**

The county clerk and recorder shall by the second Monday in September or within 30 calendar days after receiving certified taxable values notify the Department of Revenue (County Assessor's office) of the number of mills needed to be levied for each taxing jurisdiction in the county.

MCA 15-10-305(1)

The Department of Revenue (County Assessor's office) shall complete the computation of the amount of taxes, fees, and assessments to be levied against the property listed in the property tax record and shall notify the county clerk and recorder and the county treasurer by the second Monday in October. If a county clerk and recorder fails to timely notify the department of the number of mills needed to be levied for each taxing jurisdiction in that county in accordance with subsection (1)(a), the department must have additional time to meet the notification requirement of this subsection (2) equal to the number of days that the notification required in subsection (1)(a) was received late by the department.

MCA 15-10-305(2)

## **PROPERTY TAX LIMITATIONS & PROCEDURE FOR CALCULATING LEVY**

**Tax Year 1996:** Except as provided in 15-10-420 (see following), the amount of taxes levied on property may not, for any taxing jurisdiction, exceed the amount levied for tax year 1996.

MCA 15-10-402

**Maximum Mills:** A governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that may be imposed is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property plus one-half of the average rate of inflation for the prior 3 years.

MCA 15-10-420(1)(a)

A governmental entity may apply the levy calculated above, plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

MCA 15-10-420(2)

**Note:** See MCA 15-10-420(3) & (4) for discussion of what is, and what is not, included in "newly taxable property". The release of taxable value from a tax increment financing (TIF) district is included, as is the increment value of a TIF district in the year in which it terminates.

The Department of Revenue has calculated the inflation factor to be used in the calculation above as:

2018: 0.59%

2019: 0.82%  
2020: 1.02%  
2021: 1.05%  
2022: 0.93%

For purposes of the calculation above, taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

MCA 15-10-420(6)

In determining the maximum number of mills, above, the governmental entity may increase the number of mills to account for a decrease in reimbursements; and may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

MCA 15-10-420(7)

### **LEVY AUTHORITY CARRIED FORWARD**

A governmental entity that does not impose the maximum number of mills authorized may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

MCA 15-10-420(1)(b)

### **EXCEPTIONS TO THE GENERAL PROPERTY TAX LIMITATIONS**

The tax levy limitation discussed in 15-10-420(1)(a) does not apply to the following:

1. school district levies established in Title 20; or
2. a mill levy imposed for a newly created regional resource authority.

MCA 15-10-420(5)(a) & (b).

**Note:** These exceptions are subject to subsection (8) which refers to the mills imposed on a state-wide basis for the university system, basic county taxes for elementary and high school equalization, state equalization, and vocational-technical education. These sections establish mill levy limits.

The tax levy limitation discussed in 15-10-420(1)(a) does not prevent or restrict :

1. a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;
2. a levy to repay taxes paid under protest as provided in 15-1-402;
3. an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;
4. a levy for the support of a study commission under 7-3-184;
5. a levy for the support of a newly established regional resource authority;
6. the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703 (i.e. Permissive Medical Levy);

7. a levy for reimbursing a county for costs incurred in relocation of a county boundary under 7-2-2807;
8. a levy used to fund the sheriffs' retirement system under 19-7-404(2)(b); or
9. a governmental entity from levying mills for the support of an airport authority in existence prior to May 7, 2019, regardless of the amount of the levy imposed for the support of the airport authority in the past. The levy under this subsection (9)(a)(ix) is limited to the amount in the resolution creating the authority.

**Note:** A levy authorized under subsection 15-10-420(9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

MCA 15-10-420(9)(b)

### **See Table for discussions of these levies**

A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

MCA 15-10-420(10)

**Note:** This exception only applies when the county or municipality has not levied or appropriated any assistance to the airport in the prior two years; providing that when the airport levy is discontinued, that amount is subtracted from the levying governmental entity's levy authorization amount.

## **DETERMINATION OF TAX REVENUE AND MILL LEVY LIMITATIONS UNDER MCA 15-10-420**

In determining the total number of mills allowed under subsection 15-10-420(1)(a), the governmental entity increases or decreases the number of mills necessary to generate the maximum authorized property tax under this subsection. This has been commonly referred to as the "floating mill." Many local governments use a worksheet to calculate revenue limitations and the maximum allowable mill levy, including the floating mill.

## **MILL LEVY ELECTION**

A local government entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in MCA 15-10-420 by conducting an election.

MCA 15-10-425(1)

A mill levy election may be held in accordance with Title 13 part 4 or 5, or Title 20, as appropriate, in conjunction with a regular or primary election, or may be a special election. The governing body (1) shall pass a resolution; (2) shall amend its self-governing charter, or (3) must

receive a petition; indicating the intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment or petition must include:

- (a) the specific purpose for which the additional money will be used;
- (b) either:
  - (i) the specific amount of money to be raised and the approximate number of mills to be imposed; or
  - (ii) the specific number of mills to be imposed and the approximate amount of money to be raised; and
- (c) whether the levy is permanent or the durational limit on the levy.

The ballot must contain the specific information required in MCA 15-10-425(3).  
MCA 15-10-425(2)

The governing body may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, the governing body is not authorized to impose more than the approved levy in any fiscal year or to extend the duration of the approved levy.

MCA 15-10-425(5)

### **PERMISSIVE MEDICAL LEVY**

If a local government makes contributions for group benefits under MCA 2-18-703, the amount in excess of the base contribution as determined under 2-18-703(4)(c) (**see below**) for group benefits (referred to hereafter as the **permissive medical levy**) is not subject to the mill levy calculation limitation provided for in 15-10-420. Permissive medical levies must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a).

MCA 2-9-212(2)(a), MCA 2-18-703(4)(b)

**Note:** For the purposes of this section, “group benefits” means group hospitalization, health, medical, surgical, life, and other similar and related group benefits provided to officers and employees of political subdivisions, including flexible spending account benefits and payments in lieu of group benefits. The term does not include casualty insurance, marine insurance, property insurance, surety insurance, and title insurance.

**Not Applicable to Proprietary Fund Contributions:** Contributions for group benefits paid wholly or in part from user charges generated by proprietary funds, as defined by generally accepted accounting principles, are not included in the amount exempted from the mill levy calculation limitation provided for in 15-10-420.

MCA 2-9-212(2)(a)(i)

If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The mill levy must be described as the permissive medical levy.

MCA 2-9-212(2)(a)(ii)

**Public Hearing Required:** Each year prior to implementing a permissive medical levy, after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.

MCA 2-9-212(2)(b)

A permissive medical levy in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a). When a permissive medical levy decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

MCA 2-9-212(2)(c)

**Calculation of “Base Contribution”:** Subject to the following, the base contribution is determined by multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

MCA 2-18-703(4)(c)(i)

If a local government did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

MCA 2-18-703(4)(c)(ii)

If a local government has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

MCA 2-18-703(4)(c)(iii)

The Department of Administration has established BARS Fund Number 2372 for the Permissive Medical Levy.

## **INSTALLMENT PURCHASE CONTRACTS**

The budget must contain an appropriation for each installment payment that is due on installment purchase contracts.

MCA 7-5-2306

**CAPITAL IMPROVEMENT FUND**

A county, municipal, or special district governing body may establish a capital improvement fund for the replacement, improvement, and acquisition of property, facilities, or equipment that costs in excess of \$5,000 and that has a life expectancy of 5 years or more. A capital improvement plan for the fund must be formally adopted by the county, municipal, or special district governing body.

MCA 7-6-616(1) & (2)

The capital improvement fund may receive money from any source, including funds that have been allocated in any year but have not been expended or encumbered by the end of the fiscal year.

MCA 7-6-616(3)

Other sections of State law that provide specifically for capital improvement funds for specific purposes include MCA 7-14-2506 (road and bridge), MCA 7-33-2111 (rural fire districts) and MCA 75-10-521 (motor vehicle recycling and disposal).

<b><u>COUNTY MILL LEVIES</u></b>	
<p><b>Note 1:</b> A county may impose a property tax levy for any public or governmental purpose not specifically prohibited by law. The purposes in the table, below, include the 26 purposes specifically identified in 7-6-2527, as well as additional purposes that have specific statutory levy authority. (MCA 7-6-2527, MCA 7-1-2103) Public and governmental purposes include <u>but are not limited to</u> those purposes specifically identified in MCA 7-6-2527.</p> <p><b>Note 2:</b> All of the following levies are subject to the budget limitation of MCA 15-10-420, unless specifically exempted.</p> <p><b>Note 3:</b> It is against the policy of the law to raise taxes faster than the money is likely to be needed. In the absence of statutory authority, a tax cannot be levied for the sole purpose of accumulating funds in the public treasury, such as for remote or future contingencies which may never arise, nor can it be levied in excess of the amount required for the purpose for which it is levied, with the intention of using the excess for another purpose. (Rogge v. Petroleum County, 107 M 36, 80 P2d 380 (1938))</p> <p><b>Note 4:</b> Subject to 15-10-420, a <u>consolidated</u> local government may levy all taxes that counties, cities, and towns are authorized to levy. (MCA 7-3-1104)</p> <p><b>Note 5:</b> For tax levy information related to special districts, see also CO17 – Special Districts.</p>	
General MCA 7-6-2501	General provision that allows the county to levy a tax annually for county public or governmental purposes to defray current expenses.
All-Purpose MCA 7-6-2521, 2522, & 2524	General provision that allows the county to levy a tax annually for county public or governmental purposes.
<p><b>Note:</b> All Other Purposes Listed Alphabetically</p>	

<p>Adult Literacy MCA 20-7-714</p>	<p>To be used only for the support of adult literacy programs within the county. If a tax is levied for this purpose, a county adult literacy fund shall be established (BARS Fund #2225) and a county adult literacy board shall be appointed to administer the expenditure of funds.</p>
<p>Airport/Ports or Joint Airport/Ports MCA 67-10-402 MCA 7-6-2527</p>	<p>For the purpose of establishing, constructing, equipping, maintaining, and operating airports and ports.</p> <p>Note: See requirements related to the authorization to levy mills for support of airports for which a levy has not been imposed in either of the previous two years.</p>
<p>Airport Authorities MCA 67-11-302 MCA 7-6-2527</p>	<p>In counties supporting airports or airport authorities, a levy as provided for in 67-10-402 may be made for airport authority purposes.</p> <p>Note: See requirements related to the authorization to levy mills for support of airports for which a levy has not been imposed in either of the previous two years.</p>
<p>Ambulance MCA 7-34-102 MCA 7-6-2527</p>	<p>To defray the costs incurred in providing ambulance service</p>
<p>Bond (General Obligation) Sinking and Interest MCA 7-7-2265</p>	<p>Not subject to 15-10-420 if issuance of bonds approved by voters: To be used for the payment of interest and principal of each series or issue of bonds outstanding – a separate tax must be levied for each series or issue. The levy must be high enough to raise an amount sufficient to pay all interest and principal as will become due and payable during the current fiscal year or within 90 days after the fiscal year. If no principal becomes due and payable within that time, then the levy must be high enough to raise an amount sufficient to place in the sinking fund, for the payment of the principal when it becomes due, an amount not less than a sum produced by dividing the whole amount for which the bonds were originally issued by the number of years for which the bonds were originally issued to run.</p>
<p>Bridges MCA 7-14-2502 &amp; 2503 MCA 7-6-2527 See also “Roads” – MCA 7-14-2101</p>	<p>For the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities. Except that when the county has a combined ferry and bridge fund, the money must be kept as a special bridge fund (BARS Fund #2502) and may not be transferable to any other fund.</p> <p>If a county owns or operates a public ferry, the board may combine into a single fund the revenue from the county public ferry tax levy authorized in 7-14-2807 (See “Ferry”), the revenue from the special municipal bridge levy (See below), and the revenue from this levy.</p> <p>A special municipal bridge tax is authorized to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.</p>
<p>Cemetery - Veterans’ MCA 7-35-2205</p>	<p>For the construction, maintenance, and administration of a veterans’ cemetery.</p>



<p>Day-Care Centers and Homes (Licensed) MCA 7-16-2108 MCA 7-16-4114 MCA 7-6-2527</p>	<p>To establish and maintain programs for the operation of licensed day-care centers and homes – expenditures must be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes.</p>
<p>Developmental Disabilities Facilities MCA 53-20-208 MCA 7-6-2527</p>	<p>Counties may contribute to any developmental disabilities facility approved by the State Department of Public Health and Human Services, without regard to whether the facility is within or outside of their jurisdiction. Proceeds from a tax levy for this purpose must be used for the support of developmental disabilities services.</p>
<p>District Court MCA 7-6-2511 &amp; 2527</p>	<p>Costs for which a tax may be levied are:</p> <ul style="list-style-type: none"> <li>(a) costs of the office of the clerk of district court, which include but are not limited to salary and benefits for clerks, deputy clerks, and other employees of the office of the clerk of district court and expenses of the office;</li> <li>(b) costs of providing office, courtroom, and other space for district court operations under MCA 3-1-125; and</li> <li>(c) contracted costs of supplementing a district court budget, as provided in MCA 3-1-126, if incurred in the discretion of the county commissioners.</li> </ul> <p>Note: If remaining funds are available after paying the allowable costs describe above, the county commissioners, in their discretion, may use the remaining funds to pay the expenses of the office of county attorney.</p>
<p>Economic Development MCA 90-5-112 MCA 7-6-2527</p>	<p>For the purpose of economic development – the governing body may submit the question of the mill levy to the qualified voters as provided in 15-10-425 or may approve the mill levy by a vote of the governing body. Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. The funds may be used to contract with local development companies and other associations or organizations capable of implementing the economic development function; but may not be used to directly assist an industry’s operations by loan or grant or to pay the salary or salary supplements of government employees.</p>
<p>Emergency/Disaster MCA 10-3-405</p>	<p>Not subject to 15-10-420: The millage levied by the governing body of the county shall not exceed 2 mills on the taxable valuation of the county outside the municipalities. All levies under this section may be passed only by a unanimous vote of the appropriate body.</p> <p>Funds levied for an emergency and remaining when no further expenditures are necessary shall remain in a separate emergency fund (BARS Fund #2260) and shall be used only for expenditures arising from future emergencies.</p>

<p>Extension MCA 7-21-3203 MCA 7-6-2527</p>	<p>For the purpose of carrying on extension work in agriculture and home economics in cooperation with MSU-Bozeman and the US department of agriculture. The amount of an appropriation, its method of expenditure, and other aspects of the extension work must be covered in memoranda of agreement between the county commissioners and MSU-Bozeman.</p>
<p>Fairs MCA 7-16-2109 MCA 7-11-1024 MCA 7-21-3411 MCA 7-6-2527</p>	<p>MCA 7-6-2527, which gives broad authority to counties to impose property taxes for any public or governmental purpose not specifically prohibited by law, specifically lists “county fair activities” as one such purpose.</p> <p>7-16-2109 refers to a single assessment for county fairs, county parks and certain cultural, social and recreational facilities by combining the tax levy of 7-16-2102 (See “Parks, Cultural Facilities...”, below) with fees assessed in accordance with 7-11-1024. 7-11-1024 refers to the generic section for financing of special <i>districts</i>. 7-21-3411 prohibits any portion of the appropriation, tax levy, or assessment for a county fair <i>district</i> or multiple county fair <i>district</i> to be used for horseracing.</p> <p>BARS Fund #2160 has been established for this purpose.</p>
<p>Ferry MCA 7-14-2807 &amp; 2801 MCA 7-6-2527</p>	<p>If a county owns or operates a public ferry – for the purpose of constructing, maintaining, and repairing public ferries. The board of county commissioners may combine the revenue from this tax with revenue from taxes to support bridges as provided in 7-14-2502.</p>
<p>Fire Control MCA 7-33-2209 MCA 7-6-2527</p>	<p>For the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.</p>
<p>Firefighters’ (Volunteer) disability income insurance or workers’ comp coverage MCA 7-6-621 MCA 7-33-2209</p>	<p>Voter-approved levy, (i.e., subject to 15-10-425, <i>not</i> subject to mill levy limitations of 15-10-420) – for the purpose of purchasing disability income insurance coverage or workers’ compensation coverage for volunteer firefighters organized or deployed pursuant to any of the provisions of Title 7, chapter 33, parts 21 through 24 or 41 (i.e., rural fire districts, rural fire protection, fire protection in unincorporated places, fire service areas, and municipal fire departments.)</p>
<p>Forest or Grassland Hazardous Fuels Reduction Projects MCA 7-6-2527</p>	<p>In areas near homes and communities where wildland fire is a threat.</p>

<p>Health Care Facilities MCA 7-6-2512 &amp; 2527 MCA 7-34-2417 &amp; 2418</p>	<p>To erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities, as defined in 7-34-2201 and as created under 7-8-212, 7-34-2201, and 7-34-2502. (Note: If a hospital district is created under Title 7, Chapter 34, Part 21, MCA, this mill levy may not be imposed on property within that hospital district.)</p> <p>If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the commissioners may levy a tax to pay the principal and interest on the bonds. The pledge of taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made only upon the authorization of the majority of the electors of the county. (MCA 7-34-2417 &amp; 2418)</p>
<p>Indigent Assistance Programs MCA 53-3-116 MCA 7-6-2527</p>	<p>A county may provide a program of indigent assistance that may include assistance for food, clothing, shelter, transportation, medical assistance, employment programs, health &amp; preventative care and wellness programs, and may provide for the burial, entombment, or cremation of indigents. The program may be funded with money derived from a county mill levy as authorized by law.</p>
<p>Indigent Funeral Assistance MCA 7-4-2924(2)</p>	<p>Effective October 1, 2021: A county may request to receive funding from the state to provide assistance for the burial, entombment, or cremation of an indigent person regardless of whether the county currently provides an indigent assistance program as provided in 53-3-116. A county may not use this funding to cover amounts prohibited in 53-3-116(6).</p>
<p>Insect Pest Control Program MCA 7-22-2306 MCA 7-6-2527</p>	<p>The county commissioners shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture. In the succeeding year, a tax shall be levied for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants.</p>
<p>Insurance – Comprehensive MCA 2-9-212(1)</p>	<p>To fund the contribution for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section. Also, to pay the principal and interest on bonds or notes issued for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund.</p>
<p>Insurance – Group Benefits MCA 2-18-703 MCA 2-9-212</p>	<p>See taxing authority for Comprehensive Insurance, above (2-9-212). Employer’s contributions for group benefits may exceed, but may not be less than, \$10 a month. (MCA 2-18-703(4)(a))</p> <p>See “Insurance – Permissive Health Levy” below:</p> <p>The amount in excess of the base contribution of a local government’s property tax levy for contributions for group benefits is not subject to the mill levy calculation limitation provided for in 15-10-420. (MCA 2-18-703(4)(b))</p>

<p>Insurance – Permissive Medical Levy MCA 2-18- 703(4)(b) MCA 2-9-212</p>	<p>Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government’s property tax levy for contributions for group benefits is not subject to the mill levy calculation limitation provided for in 15-10-420. – See requirements for determination of levy amount.</p>
<p>Judgments MCA 2-9-316 MCA 7-6-4015</p>	<p>Not subject to 15-10-420: A final judgment or settlement shall be satisfied out of funds that may be available from the following sources: (1) insurance; (2) the general fund or any other funds legally available to the governing body; (3) a special property tax levy, in an amount necessary to pay any unpaid portion of the judgment or settlement; (4) proceeds from the sale of bonds – property taxes may be levied to amortize the bonds.</p> <p>Judgments that are to be paid from the general fund (a) must be paid in the current year if there is sufficient money OR (b) must be paid from additional tax levies made in each of the next 3 years.</p>
<p>Juvenile Detention Programs &amp; Regional Youth Detention Facilities MCA 7-6-502 MCA 41-5-1804</p>	<p>Juvenile detention programs: For the purpose of financing the establishment and operation of juvenile detention programs. Levy proceeds may be used to contract with other units of local government to purchase services from available juvenile detention programs. (7-6-502)</p> <p>Regional youth detention facility (established and maintained by two or more counties): A county may levy taxes to pay its share of the cost of equipping, operating, and maintaining the facility. (41-5-1804)</p>
<p>Library MCA 22-1-304 MCA 22-1-316</p>	<p>A local government that has established a public library may levy a tax in the amount necessary to maintain adequate public library service. An additional tax may be levied if approved by the voters. (22-1-304)</p> <p>Note: A Board of County Commissioners may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. (AGO #91, Vol. 41). However, the Commissioners may limit the overall funding of the library budget; to hold otherwise would allow the library trustees to adopt a budget that could assume the entire county general fund levy. (AGO #3, Vol. 48). The local governing body alone has the authority to determine the number of mills to levy in support of the library (AGO #7, Vol. 54).</p> <p>Joint City-County Library: The governing body of any city or county entering into a contract for a joint city-county library may levy a special tax for the establishment and operation of a joint city-county library. (22-1-316)</p>

<p>Local Government Study Commission MCA 7-3-184</p>	<p>Not subject to 15-10-420 – the governing body shall appropriate an amount necessary to fund the study, and may levy mills in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission.</p> <p>BARS Fund #2350 – Unexpended money of the study commission does not revert to the general fund at the end of the fiscal year but carries over to the study commission’s appropriation for the following fiscal year. Upon termination of the study commission, unexpended money reverts to the general fund of the local government.</p>
<p>Mental Health Services MCA 53-21-1010 MCA 7-6-2527</p>	<p>A county that is a participant in a licensed mental health center board may levy a tax to finance its share of mental health center board’s budget, if the general fund is insufficient.</p>
<p>Multijurisdictional Service Purposes  MCA 7-6-2527, MCA 7-11-1022 MCA 7-11-1112</p>	<p>MCA 7-6-2527 provides that a county may impose a property tax levy for multijurisdictional service purposes, as provided in 7-11-1022:</p> <p>7-11-1022 provides that a special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The local governments shall proportionally share the ownership of real or personal property acquired by the district pursuant to the interlocal agreement. 7-11-1112 provides that local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in accordance with 7-11-1007. 7-11-1007 requires that the resolution creating a special district designate the estimated cost and method of financing the proposed program or improvements.</p>
<p>Museum, Facility for the Arts and Humanities, and Museum District MCA 7-11-Part 10 Former 7-16-Part 22 MCA 7-6-2527</p>	<p>The broad taxing provisions of 7-6-2527 refer to Title 7, Chapter 11, Part 10 – Special Districts, and the <i>former</i> Title 7, Chapter 16, Part 22 (repealed in 2009 Legislature).</p>
<p>Open Space Land MCA 76-6-109</p>	<p>To provide and preserve open space land.</p> <p>Property taxes levied to pay the principal and interest on general obligation bonds issued for this purpose may not be levied against the properties described in 76-6-109(3).</p>

<p>Parks, Cultural Facilities, Civic Centers, Youth Centers, Recreation Centers and Complexes MCA 7-16-2102 &amp; 2109 MCA 7-6-2527</p>	<p>For the purpose of maintaining, operating, and equipping parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination of purposes, parks, and facilities.</p> <p>If a petition requesting an election for the imposition, or continued imposition, of this levy is signed by at least 15% of county resident taxpayers, the county commissioners shall submit the question to the electors at the next general election - must be approved by a majority of the electors voting on the question.</p> <p>7-16-2109 refers to a single assessment for county fairs, county parks and certain cultural, social and recreational facilities by combining this tax levy with fees assessed in accordance with 7-11-1024 (see “Fairs”, above).</p>
<p>Planning MCA 76-1-403 &amp; 404 MCA 76-1-111</p>	<p>County planning board – the board of county commissioners may create a planning district that must include the property that lies outside the limits of the jurisdictional area, as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established, as well as that property that lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy a tax on the taxable value of all taxable property located within the planning district for planning board purposes.</p> <p>City-County planning board – the board of county commissioners may create a planning district that must include the property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 that lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on the taxable value of all taxable property located within the planning district a tax for planning board purposes.</p>
<p>Planning &amp; Zoning MCA 76-2-102</p>	<p>To pay the finances necessary for the transaction of the planning and zoning commission’s business and to pay the expenses of the employees and justified expenses of the commission’s members.</p>
<p>Port Authorities MCA 7-14-1132 MCA 67-10-402 MCA 7-6-2527</p>	<p>In counties supporting port authorities, a levy authorized in 67-10-402 may be made for such purposes. (See also “Airports”)</p>
<p>Prevention Programs MCA 7-6-2527</p>	<p>Including programs that reduce substance abuse</p>

<p>Protested Tax Refund MCA 15-1-402(6)(d) &amp; (7) MCA 15-10-420(9)</p>	<p>(A) If, after a final determination by the Montana tax appeal board or a court or after settlement of an appeal, the final assessed value of a property that is centrally assessed under 15-23-101 or an industrial property that is annually assessed by the department is less than 75% of the department's original assessed value, the governing body may demand that the state refund from the general fund the protested taxes equivalent to the difference between the final determined assessed value and 75% of the original assessed value. (B) For industrial property under subsection (6)(d)(i)(A) in which the school district has elected to waive its right to its portion of protested taxes for that specific year, the department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer. (C) The provisions of subsection (6)(d)(i)(A) do not apply to protested taxes for which the taxpayer protests the classification of the property. (MCA 15-1-402 (6)(d)(i))</p> <p>If a tax protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which the local government is responsible, the taxing jurisdiction may satisfy the requirements by imposition of a "special tax protest refund levy". (MCA 15-1-402 (6)(d)(ii))</p> <p>The tax levy limitation discussed in 15-10-420(1)(a) does not prevent or restrict a levy to repay taxes paid under protest as provided in 15-1-402.</p>
<p>Public Assistance MCA 53-3-115 MCA 7-6-2527</p>	<p>To provide programs of public assistance that are determined to be appropriate.</p>
<p>Public Health MCA 50-2-111 MCA 50-2-112 MCA 7-6-2527</p>	<p>City-County Boards of Health: To finance the county's part of the total expenses, a tax is levied on all taxable property outside the incorporated limits of each participating city. Each participating city's part of the total expenses is financed by a levy on all taxable property within the incorporated limits of the city. Tax proceeds must be deposited with the county treasurer who shall disburse the money as county funds.</p> <p>District Boards of Health: District boards are financed by appropriations from the general funds of each county in the district in proportion to the population in each county. First- and second-class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under 50-2-111.</p>
<p>Public Safety MCA 7-6-2513 MCA 7-6-2527</p>	<p>To support county law enforcement services and to maintain county detention centers. Money received from the tax must be placed in a special account – BARS Fund #2300.</p>
<p>Purebred Livestock Shows &amp; Sales MCA 81-8-504 MCA 7-6-2527</p>	<p>For the purpose of defraying the costs of purebred livestock shows and purebred livestock sales – the taxes must be paid into the general fund of the county.</p>

Recreational, educational, and other activities of elderly (Senior Citizens) MCA 7-16-101 MCA 7-6-2527	To promote, establish, and maintain recreational, educational, and other activities of the elderly. The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities.
Regional Resource Authority MCA 7-10-115	Regional resource authorities may be created to provide for collaboration and coordination in the conservation of water resources or in the management of water resources for agricultural and recreational uses, and may levy for those purposes as provided by 7-6-2527.  Note: 7-10-115 states that this levy is subject to 15-10-420, although 15-10-420(5)(b) states that 15-10-420(1) does not apply to a mill levy for a <i>newly created</i> regional resource authority, & 15-10-420(9)(a)(v) states that 15-10-420(1) does not prevent/restrict a levy for a <i>newly created</i> regional resource authority.
Relocation of County Boundary MCA 7-2-2807	Not Subject to Restrictions of 15-10-420(1): County boundaries may be altered for public safety purposes (based on a property owner’s proximity to public safety services). Costs incurred by a county in preparing documentation for a county boundary alteration may be reimbursed by a tax levied against the property that has been transferred. This tax may be collected over a period of 5 years.
Retirement - Public Employees’ Retirement (PERS) MCA 19-3-204	If the required employer contributions exceed the funds available to a county from general revenue sources, a county may levy a tax that is sufficient to raise the amount of revenue needed to meet the county’s obligation.
Retirement – Sheriff’s Retirement (SRS) MCA 19-7-404  MCA 15-10-420(9)	If the required employer contributions exceed the funds available to a county from general revenue sources, a county may levy a tax that is sufficient to raise the amount of revenue needed to meet the county’s obligation.  The tax levy limitation discussed in 15-10-420(1)(a) does not prevent or restrict a levy used to fund the sheriffs’ retirement system under 19-7-404(2)(b).
Retirement – Teacher’s Retirement (TRS) MCA 19-20-605(7)	The county commissioners shall budget and pay for the employer’s contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.



<p>Roads MCA 7-14-2501 &amp; 2101 MCA 7-6-2527</p>	<p>To raise revenue for the construction, maintenance, or improvement of public highways. All money collected under this section must be deposited in the county road fund (BARS Fund #2110).</p> <p>For the laying out, maintenance, control, and management of the county roads and bridges within the county or in adjacent counties or shared jointly with other counties, and for joint highway construction projects entered into cooperation with other counties, the State or the United States.</p>
<p>Rural Improvement District Revolving Fund MCA 7-12-2182(1)(c)</p>	<p>For the purpose of providing funds for the revolving fund, the board of county commissioners have several options, one of which is to levy a tax as is necessary to meet the financial requirements of the fund.</p> <p>A tax may not be levied if the balance in the revolving fund will exceed 10% or, with the amount levied by the tax, will exceed 10% of the principal amount of the then-outstanding rural improvement district bonds and warrants secured by the revolving fund after all required transfers have been made to the district funds through fiscal yearend.</p>
<p>Schools – County Equalization MCA 20-9-331 &amp; 333 MCA 15-10-420(8)</p>	<p>Basic county tax of 33 mills for the purposes of elementary equalization and state BASE funding program support (20-9-331).</p> <p>Basic county tax of 22 mills for the purposes of high school equalization and state BASE funding program support (20-9-333).</p> <p>The Department of Revenue calculates, on a statewide basis, the number of mills for this purpose but cannot exceed 33 &amp; 22 mills. The revenue collected from these levies must be apportioned to the support of the elementary and high school BASE funding programs of the school districts in the county and to the state general fund, as directed in the respective statutes.</p>
<p>Schools – State Equalization – State-wide Levy MCA 20-9-360 MCA 15-10-420(8)</p>	<p>40 mills imposed by the county commissioners of each county on all taxable property within the state for state equalization aid to the public schools of Montana (20-9-360). The Department of Revenue calculates, on a statewide basis, the number of mills for this purpose but cannot exceed 40 mills. The funds from the mill levy must be remitted to the State.</p>
<p>Search and Rescue MCA 7-32-235 MCA 7-6-2527</p>	<p>After approval by a majority of the people voting on the question at an election, a tax may be levied to support one or more search and rescue units.</p>
<p>Solid Waste Management MCA 75-10-112</p>	<p>To finance a solid waste management system</p>

<p>Transportation – Senior Citizens and Persons with Disabilities MCA 7-14-111 MCA 7-6-2527</p>	<p>The proceeds of the levy may be used to:</p> <ul style="list-style-type: none"> <li>• contract with public or private transportation providers for services;</li> <li>• augment or subsidize provisions provided by public transportation providers; or</li> <li>• establish and operate an independent transportation system for senior citizens and individuals with disabilities.</li> </ul>
<p>University System – State-wide Levy MCA 15-10-109 MCA 15-10-420(8)</p>	<p>Not subject to 15-10-420. 6 mills imposed by the county commissioners of each county on all taxable property within the state for the support, maintenance, and improvement of the Montana university system. The Department of Revenue calculates, on a statewide basis, the number of mills for this purpose but cannot exceed 6 mills. The funds from the mill levy must be remitted to the State.</p>
<p>Vertebrate Pest Management Program MCA 7-22-2512</p>	<p>A tax on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both 7-11-1024 and this section for the control of rodents. Land within a rodent control district may be taxed under this section only a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget that is allocated to the management and suppression of vertebrate pests other than rodents. This tax must be credited to the county vertebrate pest management fund (BARS Fund # 2330).</p>
<p>Vocational-Technical Education MCA 20-25-439 MCA 15-10-420(8)</p>	<p>1 ½ mills imposed by the county commissioners of Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties. The Department of Revenue calculates, on a statewide basis, the number of mills for this purpose but cannot exceed 1 ½ mills. The funds from the mill levy must be remitted to the State.</p>
<p>Weather Modification MCA 85-3-422</p>	<p>A weather modification authority may certify annually to the board of county commissioners a tax on the taxable value of all taxable property in the county for a weather modification fund, which may be used only for weather modification activities as provided by 85-3-424. The tax certified by the authority is limited to the period of existence of the authority.</p>
<p>Weed Control MCA 7-22-2142 MCA 7-6-2527</p>	<p>A tax of not less than 1.6 mills (and subject to 15-10-420) - proceeds of the tax must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund (BARS Fund #2140).</p> <p>In addition, a tax for weed control within a special management zone as provided in 7-22-2121(4) may be imposed. The special management zone boundaries and amount of tax must be established by the board and approved by a majority of the voters within the zone.</p>



# COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES

## REVENUES

REVISION JANUARY 2022

REF: CO03.1

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**Note:** See CO16, “County Collection and Remittance of Revenues for the State and Other Governmental Entities” for narrative describing the county treasurer’s role in collecting revenues for incorporated cities and towns, school districts, special purpose districts, and the State of Montana.

**MCA 2-7-505 requires the following: “When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of custodial funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.” The standard audit contract also contains this same provision (paragraph 4.c.(4)). As such, the auditor should perform sufficient testing of the receipt and distribution of these moneys to ensure that the county is complying with applicable laws and regulations.**

## **COLLECTIONS REMITTED TO THE STATE**

The following schedules include collections made by the county treasurer that are to be remitted, in part or in whole, to the State.

Non-Motor Vehicle Collections are reported on the State remittance form “County Collection Report to the Department of Revenue”. See below for a table of the collections included on this remittance form. This County Collection Report is an on-line application. For more information, go to <http://svc.mt.gov/dor/ccreport/default.aspx>.

Motor Vehicle Collections are reported to the Department of Justice, Motor Vehicle Division” on the DOJ’s computer system – the Montana Enhanced Registration & Licensing Information Network (MERLIN). These collections include motor vehicle fees & taxes, as well as fees collected for drivers’ licenses. – See CO03.2.

**Monthly Reporting to the State:** By the 20<sup>th</sup> of each month, the county treasurer shall remit to the Departments of Revenue and Justice all money belonging to the state that was collected during the preceding month, except as follows for Department of Revenue reports:

1. By June 20, the county treasurer shall remit an estimate of all money belonging to the state that was collected by June 15, in addition to the amount collected during May.
2. By July 15, the county treasurer shall remit all money collected during the remainder of June.
3. Counties may be assessed an interest charge of 10% a year on all money not remitted by the prescribed time.

MCA 15-1-504

**Investment and Remittance of School-Related Tax Collections:** The county treasurer is required to invest, within three working days of receipt, money received from the following sources. The money must be invested until the working day before it is required to be distributed to school districts or remitted to the State. All investment income must be deposited proportionately in the funds established to account for the taxes received.

- (a) the basic county tax for elementary equalization (33 mills) (BARS Fund No.7529);
- (b) the basic county tax for HS equalization (22 mills) (BARS Fund No. 7531);
- (c) the county tax levy in support of the transportation schedules (BARS Fund No. 7820);  
and
- (d) the county tax levy in support of the elementary and high school district retirement obligations (BARS Fund Nos. 7840 & 7830, respectively).

MCA 20-9-212(12)

**Note:** Investment income from these sources should be reported on OPI’s Form FP-6b, “County Treasurer’s Report of County Wide School Funds” as a “Non-Tax Source.”

The county treasurer is required to remit the interest earned on the basic county tax for elementary education (33 mills) and the basic county tax for high school equalization (22 mills) to the State on a monthly basis.

MCA 20-9-212(13)

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE</b> <b>COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<b>Property Taxes &amp; Related Non-Tax Collections</b>	
<p><b>University System Tax Levy</b>                      MCA 15-10-109                      MCA 15-1-402(4)(b) – Centrally Assessed Protested Property Tax                      MCA 7-6-103 – Payment in Lieu of Taxes (PILT)                      BARS Fund #7521 – ad valorem tax, including protested portion                      BARS Fund #7522 – associated non-levy collections                      BARS Fund #7523 – total from tax increment financing districts, including protested portion                      BARS Fund #7535 – Coal gross proceeds-non-levy revenue                      BARS Fund #7543 – Federal PILT-non-levy revenue</p>	<p><b>6 Mills</b> - Levied upon the taxable value of all real and personal property subject to taxation in the state, for the support, maintenance, and improvement of the Montana university system. The funds raised from the levy must be remitted to the State.</p> <p>Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 and any protested taxes in a school district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409 must be remitted by the county treasurer to the State.</p>
<p><b>State Equalization Aid Levy</b>                      MCA 20-9-360                      MCA 15-1-402(4)(b) – Centrally Assessed Protested Property Tax                      MCA 7-6-103 – Payment in Lieu of Taxes (PILT)                      BARS Fund #7527 – ad valorem tax, including protested portion                      BARS Fund #7528 – associated non-levy collections                      BARS Fund #7544 – Federal PILT-non levy revenue</p>	<p><b>40 Mills</b> - Levied upon all taxable property within the state, except property (motor vehicles) for which a tax or fee is required. Proceeds of the levy must be remitted to the State, for state equalization aid to the public schools of Montana.</p> <p>See “University System Tax Levy”, above, for discussion on centrally assessed protested property tax.</p>

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE</b> <b>COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<p><b>Basic County Tax for Elementary Equalization</b></p> <p>MCA 20-9-331</p> <p>MCA 20-9-212</p> <p>MCA 15-1-402(4)(b) - Centrally Assessed Protested Property Tax</p> <p>MCA 7-6-103 – Payment in Lieu of Taxes (PILT)</p> <p>MCA 17-3-213 – Allocation of Forest Reserve Funds</p> <p>MCA 17-3-221 – Taylor Grazing Act</p> <p>BARS Fund #7529 – ad valorem tax, including protested portion</p> <p>BARS Fund #7530 – associated non-levy collections, including investment earnings (see MCA 20-9-331(2))</p> <p>BARS Fund #7538 – Coal gross proceeds non-levy revenue</p> <p>BARS Fund #7542 – Federal Forest Reserve-non-levy revenue</p> <p>BARS Fund #7546 – Federal PILT-non-levy revenue</p> <p>BARS Fund #7550 – Federal Fish/Wildlife-BLM Grazing-non-levy revenue</p>	<p><b>33 Mills</b> - Levied upon all taxable property within the county, except for property (motor vehicles) subject to a tax or fee, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy is initially remitted in total to the State, and the State apportions the revenues on a quarterly basis to the school districts in the county.</p> <p>See “University System Tax Levy”, above, for discussion on centrally assessed protested property tax.</p>

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE</b> <b>COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<p><b>Basic County Tax for High School Equalization</b>                      MCA 20-9-333                      MCA 20-9-212                      MCA 15-1-402(4)(b) - Centrally Assessed Protested Property Tax                      MCA 7-6-103 – Payment in Lieu of Taxes (PILT)                      MCA 17-3-213 – Allocation of Forest Reserve Funds                      BARS Fund #7531 – ad valorem tax, including protested portion                      BARS Fund #7532 – associated non-levy collections, including investment earnings (see MCA 20-9-333(2))                      BARS Fund #7537 – Coal gross proceeds-non-levy revenue                      BARS Fund #7541 – Federal Forest Reserve-non-levy revenue                      BARS Fund #7545 – Federal PILT-non-levy revenue</p>	<p><b>22 Mills</b> – Levied upon all taxable property within the county, except for property (motor vehicles) subject to a tax or fee, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy is initially remitted in total to the State, and the State apportions the revenues on a quarterly basis to the school districts in the county.                       See “University System Tax Levy”, above, for discussion on centrally assessed protested property tax.</p>
<p><b>Vo-Tech Millage</b>                      MCA 20-25-439                      MCA 20-9-212(11)                      MCA 15-1-402(4)(b) - Centrally Assessed Protested Property Tax                      BARS Fund #7533 – ad valorem tax, including protested portion                      BARS Fund #7534 – associated non-levy collections</p>	<p><b>1 ½ Mills</b> - Levied upon all taxable property, real and personal, located within <b>Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties</b>. The county treasurer shall remit the receipts from this tax to the State, &amp; the funds must be distributed for vocational technical education on the basis of budgets approved by the board of regents.</p>
<b>Court Fees, Fines &amp; Forfeitures</b>	
<p><b>Criminal Jury Reimbursement</b>                      MCA 46-18-232 &amp; 235                      BARS Fund #7448</p>	<p>A court may require a convicted defendant in a felony or misdemeanor case to pay costs, including the costs of jury service. Money collected by a court as a result of the assessment of costs under the provisions of 46-18-232 must be paid by the clerk of district court to the State.</p>

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<b>Fines – Board of Outfitters</b> MCA 37-47-344 BARS Fund #7449	A person who violates any provision of Title 37, Chapter 47 (Outfitters & Guides) is guilty of a misdemeanor and is punishable, unless otherwise specified, by a fine not exceeding \$500. Prior to April 22, 2021: <b>50% of all fines paid</b> under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be remitted to the State.
<b>Drug Forfeitures</b> MCA 44-12-213 BARS Fund #7450	Whenever property is seized, forfeited, and sold under the provisions of Title 44, Chapter 12 (Seizures Related to Controlled Substances), the net proceeds of the sale must be distributed first to individuals with interests in the property and, if property was seized by a state employee, the remainder must be remitted to the State.
<b>J.P. Fines/Forfeitures</b> MCA 3-10-601 BARS Fund #7451	Generally, all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must be paid to the county treasurer, who shall distribute the money received <b>50% to the State</b> and 50% to the county general fund.
<b>Driver's License Reinstatement Fee</b> MCA 61-5-218 BARS Fund #7452	A person whose driver's license/privilege has been suspended or revoked shall pay a reinstatement fee of <b>\$200</b> to the State to have the driver's license or driving privilege reinstated.
<b>FWP OHV &amp; ATV Registration Fines</b> MCA 23-2-807 BARS Fund #7454	The failure to display a valid decal indicating that the fees and taxes have been paid on off-highway vehicles is a misdemeanor punishable by a fine of <b>\$50</b> . The fine must be transmitted to the State.
<b>FWP Boat Registration Fine</b> MCA 23-2-519 BARS Fund #7455	Failure to pay the registration fee on boats or watercraft is a misdemeanor, punishable by a fine equal to four times the registration fee that is due. All fines collected must be distributed 50% to the county general fund and <b>50% to the State</b> .
<b>FWP Underwater Diver Fine</b> MCA 23-2-507 & 525 BARS Fund #7456	Violations of any section of Title 23, Chapter 2, Part 5 (Recreation, Boats) are a misdemeanor and shall be punishable by a fine or imprisonment or both. All fine and bond forfeitures, except those paid to a justice's court, must be transmitted to the State. If 23-2-525(4)** is violated, State laws related to restitution apply. **A person may not operate a motorboat within 200 feet of a tow-float or buoy displaying a "diver-down" symbol.



<b>TABLE OF COLLECTIONS REMITTED TO THE STATE COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<b>State Lands Use Permit Fine</b> MCA 77-1-801, 804, & 806 MCA 87-1-601(7) BARS Fund #7457	All persons must obtain an annual recreational use license to use state lands for general recreational purposes. A violator is guilty of a misdemeanor and shall be fined or imprisoned or both. Fines and bond forfeitures must be remitted to the State.
<b>Court Surcharge – Court Information Technology</b> MCA 3-1-317 BARS Fund #7458	All courts of original jurisdiction shall impose a <b>\$10</b> user surcharge in addition to other court costs, fees or fines. The surcharge must be forwarded to the State to be used for state funding of court information technology.
<b>Fines – Dangerous Drugs</b> MCA 45-9-130 BARS Fund #7459	The court shall fine each person found to have possessed or stored dangerous drugs 35% of the market value of the drugs as determined by the court. The fine must be transmitted by the clerk of court to the State.
<b>Fines – Campgrounds, etc.</b> MCA 50-52-105 BARS Fund #7460	A person violating a provision of Title 50, Chapter 52 (Tourist Campgrounds and Trailer Courts) is guilty of a misdemeanor and upon conviction shall be fined. Fines, except justice's court fines, must be paid to the county treasurer who shall send all fines collected to the State.
<b>Clerk of District Court Fees</b> MCA 25-1-201 & 202 MCA 50-15-301 BARS Fund #7461	See CO14, County Offices/Boards, for a listing of fees that the clerk of district court collects. Generally, fees collected by the clerk of district court must be remitted in total to the State general fund. ( <b>Exceptions to this general rule are noted below</b> – although the entire fee is remitted to the State, the fee is further allocated for specific purposes once received by the State.)
<b>Petition for Adoption</b> MCA 25-1-201(1)(q) BARS Fund #7462	The clerk of district court shall collect <b>\$75</b> for filing a petition for adoption, which must be remitted to the State.
<b>Commencement of Actions &amp; Proceedings</b> MCA 25-1-201(1)(a) & (5) BARS Fund #7463	The clerk of district court shall collect <b>\$90</b> at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, which must be remitted to the State.
<b>Petition for Dissolution of Marriage</b> MCA 25-1-201(1)(a) & (3)(a) BARS Fund #7464	The clerk of district court shall collect <b>\$170</b> for filing a petition for dissolution of marriage, which must be remitted to the State.
<b>Petition for Legal Separation</b> MCA 25-1-201(1)(a) & (3)(b) BARS Fund #7465	The clerk of district court shall collect <b>\$150</b> for filing a petition for legal separation, which must be remitted to the State.

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<p><b>District Court Fines, Assessments, Payments and Forfeitures</b> MCA 3-15-205 MCA 46-8-114 MCA 46-9-511 MCA 46-18-231 &amp; 232 MCA 46-18-603 BARS Fund #7466</p>	<p>The referenced MCA sections address:</p> <ul style="list-style-type: none"> <li>• The costs of impaneling a jury</li> <li>• The costs of assigned counsel</li> <li>• The forfeiture of bail in a felony case</li> <li>• If an offender has been found guilty of an offense, fines as set forth in 46-18-231.</li> <li>• Costs assessed against a convicted defendant in a felony or misdemeanor case, as defined in 25-10-201, plus costs of jury service, costs of prosecution, and the cost of pretrial, probation, or community service supervision.</li> </ul> <p>All fines and forfeitures collected must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After those costs are paid, the remainder, if not paid to a justice's court or otherwise provided by law, must be forwarded to the State.</p>
<p><b>Montana Law Enforcement Academy Surcharge</b> MCA 3-1-318 BARS Fund #7467</p>	<p>All courts of limited jurisdiction shall impose a <b>\$10</b> surcharge on a defendant who is convicted of criminal conduct under state statute or who forfeits bond. This surcharge must be imposed in addition to other court costs, fees, or fines, and must be deposited in the court-appointed special advocate account established in the state special revenue fund.</p>
<p><b>Marriage License/Marriage Without Solemnization</b> MCA 25-1-201(1)(l), (1)(o), &amp; (7) BARS Fund #7468</p>	<p>The clerk of district court shall collect <b>\$53</b> for issuing a marriage license Effective October 1, 2021: when one or both parties to the marriage are present at the solemnization or for filing a declaration of marriage without solemnization. Effective October 1, 2021: The clerk of district court shall collect <b>\$83</b> for issuing a marriage license when neither party is present at the solemnization. Of that amount, <b>\$10</b> (Effective October 1, 2021: or <b>\$30</b> if neither party is present at the solemnization) <b>must be deposited in the county district court fund</b>, or, if a district court fund does not exist, in the county general fund to be used for district court operations. The <b>remainder must be remitted to the State.</b></p>
<p><b>Probationer and Parolee Supervisory Fee</b> MCA 46-23-1031 BARS Fund #7470</p>	<p>A probationer, parolee, or person committed to the State Department of Corrections who is supervised by the Department shall pay to the Department a supervisory fee of between \$120 and \$360 a year, prorated at no less than \$10 a month, or if under continuous satellite-based monitoring shall pay to the Department a supervisory fee of no more than \$4,000 a year. A person allowed to transfer supervision to another state shall pay a fee of \$50 to cover the cost of processing the transfer.</p>

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<b>Public Defender Fees</b> MCA 46-18-235 MCA 46-8-113 & 114 BARS Fund #7471	<p>A court may require a convicted defendant in a felony or misdemeanor case to pay costs, including the costs of a public defender. Money collected by a court as a result of the assessment of costs must be paid by the clerk of district court to the State.</p> <p>For public defender fees assessed prior to July 1, 2017, payments must be made to the clerk of the sentencing court for allocation as provided in 46-18-201, 46-18-232, and 46-18-251 and deposited in the general fund. For public defender fees assessed on or after July 1, 2017, payments must be made directly to the office of state public defender and deposited in the general fund. (MCA 46-8-114(3)(4))</p>
<b>Miscellaneous Revenues</b>	
<b>Livestock Per Capita Fees – All Livestock Except Sheep</b> MCA 15-24-921 & 925 BARS #7510	<p>A per capita fee is imposed on all poultry and honey bees, all swine 3 months of age or older, and all other livestock 9 months of age or older. The per capita fee is due on May 31 of each year. "Livestock" means cattle, sheep, swine, poultry, honey bees, goats, horses, mules, asses, llamas, alpacas, domestic bison, ostriches, rheas, and emus, and domestic ungulates. Effective May 14, 2021: A per capita fee may not be imposed on bison owned by a tribal member or tribe and located on fee land or tribal land within the boundaries of a reservation. The Department of Revenue may withhold 2% of the fee as reimbursement for the collection of the fee, and the remainder shall be remitted to the State to the credit of the Department of Livestock. The amount received from the fee imposed on sheep shall be separately designated from the fee imposed on all other livestock.</p>
<b>Livestock Per Capita Fees – Sheep</b> MCA 15-24-921 & 925 BARS #7512	<p>See discussion above</p>

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<p><b>Land Information Fee</b> MCA 7-4-2637 BARS #7551</p>	<ul style="list-style-type: none"> <li>• The fee for recording a <u>standard document</u> is Prior to July 1, 2021: \$7 Effective July 1, 2021: \$8 for each page or fraction of a page and shall be apportioned as follows: \$1 must be deposited in the County records preservation fund (BARS Fund #2393), Prior to July 1, 2021: 25 cents Effective July 1, 2021: 50 cents must be deposited in the County land information account (BARS Fund#2859), Prior to July 1, 2021: <b>75 cents</b> Effective July 1, 2021: <b>\$1.50 must be transmitted each month to the State</b> and the remainder must be deposited in the county general fund.</li> <li>• The fee for recording a <u>non-standard document</u> is the fee specified above, plus \$10. The fee must be deposited in the County records preservation fund (BARS Fund #2393), to be used only for maintaining, upgrading, or installing systems to digitally record and retrieve documents.</li> </ul>
<p><b>Escheated Estates</b> MCA 72-14-202, 204, &amp; 209 BARS #7561</p>	<p>The county treasurer shall keep an account of the money received from the public administrator for each estate and shall remit the money to the State Department of Revenue with a statement of the estate to which the money belongs. The Department shall then deliver the money to the state treasurer for deposit in the private purpose trust fund. All sums escheated under the provisions of parts 1 through 3 of Title 72, Chapter 14 must be remitted in the same manner.</p>
<p><b>Forester's FPRA – Fire Protection Fee (Wildland Fire Protection Assessments)</b> MCA 76-13-207 &amp; 209 BARS #7564</p>	<p>DNRC shall certify in writing to the Department of Revenue the names of owners of lands in each county, together with statement of the amount due from each of the owners for wildland fire protection. The Department shall extend the amounts upon the county tax rolls, and the sums are to be paid in the same manner as general taxes. This money must be remitted to the State.</p>
<p><b>Interest on Late Report</b> MCA 15-1-504 BARS #7580</p>	<p>The Department of Revenue may assess counties an interest charge, at the rate of 10% a year, on all money that is not remitted by the prescribed time.</p>
<p><b>Airport Tax</b> MCA 67-1-303 BARS #7699-1</p>	<p>State airport property tax collected on property of airport companies – only applicable to counties in which a state airport is located: within 30 days of receipt, the county treasurer shall transmit to the State 90% of the property tax collected. (Applies only to West Yellowstone Airport in Gallatin County)</p>

<b>TABLE OF COLLECTIONS REMITTED TO THE STATE</b> <b>COUNTY COLLECTION REPORT TO THE DEPARTMENT OF REVENUE</b>	
<p><b>Victim &amp; Witness Advocate Program</b>                      MCA 46-18-236 &amp; 251                      BARS #7699-2</p>	<p>All courts of original jurisdiction must impose a charge on a person with a criminal conviction or upon forfeiture of bond or bail that is in addition to other court costs, fees, or fines. The charge is (a) \$15 for each misdemeanor charge; (b) the greater of \$20 or 10% of the fine levied for each felony charge; and (c) an additional \$50 for each misdemeanor and felony charge. The county treasurer may retain the charges collected under (a) and (b) and shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for those salaries may be used for the payment of any other county salaries. Of the charges collected under (c), \$1 shall be deposited in the collecting court’s fund for mitigation of administrative costs incurred, and the remainder shall be used for payment of the expenses of a victim and witness advocate program that is operated or used by the county. If the county does not operate or use a victim and witness advocate program, all charges collected under (c) must be remitted to the State.</p>

**LOCAL CHARGES FOR SERVICES FUND**

**MCA 17-2-302(3) states that an audit performed by the independent auditor pursuant to Title 2, Chapter 7, Part 5, MCA, (Montana Single Audit Act) shall include a determination of whether money is or has been retained in a local charge for services fund contrary to the requirements of MCA 17-2-302 or 303.**

**Note:** The following statutes, related to local charge for services funds, apply only to counties, cities, consolidated governments, and towns.

**Definitions:**

“Charge for services” or “charge” as defined by MCA 17-2-301(3)(a), means a fee, charge, levy, or other assessment that is established by local government *ordinance*\*\* and that is:

- (a) charged by the local government to a user of a service provided by the local government;
- (b) charged by the local government in exchange for a license, permit, or other type of grant of authority by the local government; or
- (c) collected exclusively to provide promotional or marketing services to the person on whom the charge is levied and that is not assessed or collected pursuant to MCA Title 15.

For the purposes of 17-2-302(1) or (3)(a) or 17-2-304, the term includes a fee, charge, levy, or other assessment established as provided above, and also includes a fee, charge, levy, or other assessment established by statute.

MCA 17-2-301(3)(b)

"Local charge for services fund" or "local fund" as defined by MCA 17-2-301(6) means an accounting fund maintained by a local government for which the exclusive source of revenue is one or more charges for services or interest or other income on the fund.

**Limitation on Balance:** A county that deposits money into a local charge for services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for that year from the fund.

MCA 17-2-302(1)

**Limitation Not Applicable:** Except as otherwise provided in 17-2-301(3)(b), this limitation does not apply to: (a) a charge for services made by one local government entity to another local government entity; (b) a local charge for services fund used only for replacement of buildings or to pay the costs of other future capital projects; (c) a fee, charge, tax, levy, or other assessment the amount of which is established by statute; or (d) charges for services deposited in accordance with law into a debt service or bond reserve fund or the county general fund.

MCA 17-2-302(4)

**Exception to Limitation:** This restriction may be waived if the manager of the service or function certifies to the governing body

- (a) the date on which the balance exceeded the limitation,
- (b) the amount of the excess,
- (c) the amount of money usually needed in the local fund for the operation of the service or function for 1 year,
- (d) whether the excess is necessary for the operation of the service or function because of:
  - (i) an emergency;
  - (ii) a special or unusual circumstance; or
  - (iii) a fluctuation in the service, function, or charges for services of the entity, and
- (e) the facts and circumstances demonstrating the emergency, unusual circumstance or fluctuation.

MCA 17-2-302(2)

**Reduction of Charge for Services Required:** A county that maintains a cash balance in excess of this limitation in 17-2-302(1) for more than 60 days shall, within 120 days after the end of the 60-day period, reduce the charge for services or, in the case of a local fund into which two or more charges for services are deposited, reduce one or more charges for services specified by the county until the cash balance in the local fund complies with the limitation.

MCA 17-2-303

## **OTHER REVENUES/RECEIPTS COMMONLY RECEIVED**

### **Grant Information:**

- (1) Each state agency shall provide an annual report pursuant to subsection (2) to the legislative finance committee by October 1 of each year.
- (2) The report must be provided electronically as a spreadsheet and must include the following information about each grant awarded by the state agency during the previous fiscal year:

- (a) the name of the grantee;
- (b) the address of the grantee;
- (c) the amount of the grant;
- (d) the award date of the grant;
- (e) the purpose of the grant; and
- (f) the grant period.

(3) The legislative finance committee shall post an internet link to the reports on its website under the meeting materials for the committee meeting that next follows the deadline established in subsection (1). At the end of the interim, a copy of the link or links must be provided to the legislature in accordance with 5-11-210.  
MCA 5-12-208

The link to the Legislative Finance Committee is  
<https://leg.mt.gov/committees/admincom/lfc/>

Following is a schedule of revenues/receipts commonly received by counties, along with the source and required distribution and/or use of the revenues/receipts.

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Note:</b> Except for nontax revenue earmarked for a specific fund, the county treasurer may deposit in the general fund any nontax revenue of \$25 or less received by the county. MCA 7-6-2207</p>	
<b>Revenue Source: State Departments</b>	
<b>Department of Administration</b>	

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>9-1-1 Emergency Telecommunications Allocation</b></p> <p>MCA 10-4-304 to 306</p> <p>MCA 10-4-306</p> <p>The Public Safety Services Bureau of DOA performs extensive monitoring procedures on these 9-1-1 allocations. See their website at:  <a href="https://sitsd.mt.gov/About-Us/Public-Safety/">https://sitsd.mt.gov/About-Us/Public-Safety/</a></p>	<p>Each local and tribal government entity that hosts a public safety answering point must receive an allocation of the total quarterly balance of the account.</p> <p>Beginning July 1, 2018, grants must be awarded to private telecommunications providers, local <b>Effective March 1, 2021: or tribal</b> government entities that host public safety answering points, or both in accordance with this section and with rules adopted by the department in accordance with 10-4-108.</p>
<p><b>Taylor Grazing Act</b></p> <p>MCA 17-3-221 &amp; 222</p>	<p>All monies received by the County to be credited to the County General Fund. (50% of the monies received by the State deposited directly to the state general fund to be used for the elementary BASE funding programs of school districts in the county.)</p> <p>NOTE: These monies are not subject to the single audit provisions of OMB Circular A-133/UGG</p>
<p><b>Workers' Compensation Dividends</b></p> <p>MCA 39-71-2323</p>	<p>Prorated to participating funds</p>
<p><b>State Contributions to Pension Trust Funds</b> for Members Employed by Local Government Entities and School Districts (On-Behalf Payments)</p> <p>PERS – 19-3-319 – 0.10%*</p> <p>MPORS – 19-9-702 – 29.37%*</p> <p>FURS – 19-13-604 – 32.61%*</p> <p>TRS – 19-20-604 &amp; 607 – 2.49%</p> <p>*Note: Percentage noted is of members' compensation.</p>	<p>These payments are not made to local governments but are instead made directly by the State to the listed Statewide pension funds. These payments are considered “on-behalf payments for fringe benefits” under the provisions of GASB Statement No. 24, and should be recorded by the county as revenues and expenditures/expenses. They should be prorated to participating funds that incur these payroll expenses.</p> <p><b>Note:</b> Journal entry only – revenues equal expenditures/expenses.</p>



<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Land Information Grants</b> MCA 90-1-410 &amp; 411</p>	<p>Local governments may apply to the Department of Administration for funds to be used for the purposes of collecting, maintaining, or disseminating land information, including purchasing technology to assist in these purposes.</p> <p>BARS Fund No. 2859, Revenue Code #334065 &amp; Expenditure Code #411060</p>
<p><b>Mineral Impact – Allocation of Federal Mineral Leasing Funds</b> MCA 17-3-240 &amp; 241 30 U.S.C. 191</p>	<p>These funds are allocated to eligible counties based on the proportion that the revenue generated by mineral extraction in a county bears to the total received by the State. (BARS Fund No. 2894, Revenue Code #332020)</p> <p>Note: This is considered to be a federal revenue source from the U.S. Department of Interior, BLM. However, these monies are <u>not</u> subject to the provisions of OMB Circular A-133/UGG</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Forest Reserve</b> (Schools and Roads - Grants to States – 16 USC 500), Public Laws 106-393, 110-343, &amp; 112-141) Funds, plus all interest earned on those funds  <b>(See ADM-1 for further detail)</b>                      MCA 17-3-211                      MCA 17-3-212                      MCA 17-3-213                      16 USC 500                      PL 106-393 (Secure Rural Schools &amp; Community Self-Determination Act of 2000)                      PL 110-343 &amp; 112-141 (Reauthorizations of Secure Rural Schools &amp; Community Self-Determination Act of 2000)                      PL 115-141 (Extension of Secure Rural Schools and Community Self-Determination Act of 2000)                      See the U.S. Forest Service’s website at <a href="https://www.fs.usda.gov/pts/">https://www.fs.usda.gov/pts/</a> and MACo’s website at <a href="https://www.mtcounties.org/resources-data/">https://www.mtcounties.org/resources-data/</a>                      (click on “Federal Payments &amp; Resources for Counties” heading) for information related to the Federal Forest Reserve program.</p>	<p>The board of county commissioners shall choose among the following payment options to determine how these funds apportioned to each county must be distributed:</p> <ol style="list-style-type: none"> <li>1. <b>“25% Payment” (16 USC 500)</b> - funds received must be distributed: 66 2/3% to County Road Fund and 33 1/3% to the following countywide school levies based on the number of mills levied: county elementary equalization (20-9-331 - BARS Fund No. 7530), county HS equalization (20-9-333 - BARS Fund No. 7532), county transportation (20-10-146 - BARS Fund No. 7820), elementary &amp; HS retirement (20-9-501 - BARS Fund No. 7840 &amp; 7830). (Title I - Road &amp; School)</li> <li>2. <b>“State Payment” under PL 110-343</b> - 80% to 85% must be distributed as provided in the “25% Payment” option above. The balance (15% to 20%) must be allocated as follows:                       If the State Payment is more than \$350,000, the balance may be reserved for Title II and Title III projects, or returned to the federal government. The Title III allocation is limited to no more than 7%.                       If the State Payment is more than \$100,000 but less than or equal to \$350,000, the county may use all funds for Title II or Title III projects or return the funds to the federal government.                       If the State payment is less than or equal to \$100,000 (“minor distribution”), the county may elect to distribute up to 100% of the payment as provided in the “25% Payment” option above. The county may opt to allocate 15-percent to 20-percent of its share to Title II, Title III, or a combination of both. (A minor distribution no longer mirrors a major distribution).</li> </ol> <p>See ADM-1 for additional information, including detail related to Title II and Title III funding and allowable costs.</p>
<p><b>County Search and Rescue Unit Training and Support Services</b>                      MCA 7-32-236</p>	<p>Effective October 1, 2021: A county sheriff may request to receive funding from the state to provide additional training, support, or equipment to one or more search and rescue units in the county established or recognized under 7-32-235.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>Department of Agriculture</b>	
<b>Weed Management District Program Enhancement</b> MCA 80-7-705	Annual payment. To be deposited in the county noxious weed fund (BARS Fund #2140) and must be used to enhance noxious weed management programs.
<b>Noxious Weed Management Grants</b> MCA 80-7-814 ARM 4.5.101 to .112	Entities apply for funding for noxious weed management projects. Grant proceeds deposited to county weed grant fund (BARS Fund #2840). Eligible uses of the funds, required matching, and required reporting are set forth in the grant document.
<b>Department of Commerce</b>	
<b>Bed Tax Apportionment</b> MCA 15-65-111 & 121(2)(e)	To be distributed to the nonprofit convention and visitors bureau recognized by the local government. <b>Note:</b> Applies to those cities, consolidated city-county governments, resort areas, and resort area districts which have a recognized nonprofit convention & visitors' bureau and an annual marketing plan approved by the Tourism Advisory Council. Prior to July 1, 2021 and effective July 1, 2027: 63% Effective July 1, 2021, through June 30, 2027: 60.3% is to be used directly by the DOC.
<b>Big Sky Economic Development Grants</b> MCA 90-1-203 & 204  For further information: <a href="https://marketmt.com/Programs/Business-Assistance/Big-Sky-Economic-Development-Trust-Fund-Program/">https://marketmt.com/Programs/Business-Assistance/Big-Sky-Economic-Development-Trust-Fund-Program/</a>	Uses of these funds include but are not limited to (1) a reduction in the interest rate of a commercial loan for the expansion of a basic sector company; (2) a grant or low-interest loan for relocation expenses for a basic sector company; and (3) rental assistance or lease buy-downs for a relocation or expansion project for a basic sector company. Matching grants distributed to local governments based on the number of jobs expected to be created because of the funding. BARS revenue code 334075.

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Coal Impact Grants</b>                      MCA 90-6-201 to 209                      MCA 90-6-1001(2)                      MCA 15-35-108(9)                      ARM 8.101.301 to .306                      MCA 7-6-622</p>	<p>Funded by coal severance taxes, which are deposited to a State coal natural resource account. Entities apply for grant funding to provide services that are needed as a direct consequence of an increase or decrease of coal development or in the consumption of coal by a coal-using energy complex. Eligible uses of the funds are set forth in the grant document. [Distributed by the Coal Board, which is attached to the Dept. of Commerce for administrative purposes.]</p> <p>The governing body of a county receiving funding from coal-related activities may establish a county coal trust fund. Money received by a county from coal-related activities may be placed in the coal trust fund and may not be appropriated by the governing body until: (a) a coal mining operation or coal-fired electric generation facility has permanently ceased mining-related or energy production-related activity; or (b) the number of persons employed full-time in coal mining or coal-fired electric generation activities by the coal mining operation or coal-fired electric generation facility is less than 75% of the average number of persons employed full-time in activities by the operation or facility during the immediately preceding 5-year period. The county may use the funds in the coal trust fund as specified in MCA 7-6-622(3).</p>
<p><b>Hard-Rock Mining Impact Trust Account Payment</b>  <i>(See COM-3 for further detail)</i>                      MCA 90-6-331                      MCA 7-6-2225</p>	<p>To be deposited in the County Hard-Rock Mine Trust Fund (formerly the Hard-Rock Mine Trust Reserve Fund) (BARS Fund No. 2895). Must be held until mine closure or a significant workforce reduction. The county must then allocate at least 1/3 of the funds proportionally to affected high school districts and elementary school districts in the county. The remaining funds may be used by the county for the purposes specified in MCA 7-6-2225(3).</p>
<p><b>Montana Coal Endowment Program (MCEP)</b>                      (previously known as the Treasure State Endowment Program (TSEP))                      Title 90, Chapter 6, Part 7                      MCEP Project Administration Manual</p>	<p>Matching grants for construction projects &amp; preliminary engineering studies, and non-matching emergency grants. Grant funds disbursed on a reimbursement basis. Prior to October 1, 2021: TSEP Effective October 1, 2021: MCEP contracts will include a detailed project budget and implementation schedule, and the general and special terms associated with the project.</p> <p>For further information: <a href="https://comdev.mt.gov/Programs-and-Boards/Montana-Coal-Endowment-Program/">https://comdev.mt.gov/Programs-and-Boards/Montana-Coal-Endowment-Program/</a></p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>Department of Environmental Quality</b>	
<b>Underground Storage Tank (UST) Program:</b> Reimbursements and Grants MCA 75-11-213	Grants are to be used only for equipment purchases or personnel training related to the UST inspection program. Reimbursements are made on a quarterly basis at a rate of \$35/hour. Both grants and reimbursements are deposited to the fund used to pay costs of inspection and enforcement services – usually BARS Fund #2815.
<b>Junk Vehicle Program Payments</b> MCA 75-10-534 ARM 17.50.216	Payments for the county’s junk vehicle program, per the county’s DEQ-approved budget. Generally accounted for in the Junk Vehicle Fund (BARS Fund #2830) or the County General Fund. Per DEQ policy statement, any unexpended grant funds may be put into a formally adopted capital improvement program. Fiscal year budgets must be spent or encumbered by June 30. or returned to DEQ, either directly or through a reduction of the following year’s budget. Payments = \$1.40/vehicle licensed in county; minimum annual payment = \$7,500.
<b>Subdivision Reviews – State Reimbursement</b> MCA 76-4-104 & 105 ARM 17.36.804	Quarterly reimbursements. Deposit to County General Fund used to pay costs of subdivision reviews.  Effective October 1, 2021: <b>Note:</b> The county may establish a fee to review applications, conduct site visits, and review applicable exemptions under this chapter. The fee must be paid directly to the county and may not exceed the county's actual cost that is not otherwise reimbursed by the department from fees adopted pursuant to this section.
<b>Department of Fish, Wildlife &amp; Parks</b>	
<b>Fish, Wildlife &amp; Parks – Payments in Lieu of Taxes</b> MCA 87-1-603 & 604	Allocated to school districts in the county that contains FWP department lands, and/or the county General Fund, at the discretion of the county commissioners.
<b>Boating Improvement Grants</b> MCA 23-2-533 MCA 15-1-122(2)(c)	This funding is to be used for boat ramps, latrines, boat trailer parking areas, docks and related facilities. The grants are FWP funds (all State funding from motorboat fees in lieu of taxes) and require a 20% local government match.
<b>Department of Justice</b>	

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>Live Card Game Table Permit Fees</b> MCA 23-5-306	No specific fund or use is designated by statute. Statute states deposit to county treasury. Usually credited to general fund. May be used for any legitimate governmental purpose as determined by the governing body. Quarterly payment.
<b>Gambling Machine Permit Fees</b> MCA 23-5-612	No specific fund or use is designated by statute. Statute states return to the local government jurisdiction in which the machine is located. Usually credited to general fund. May be used for any legitimate governmental purpose as determined by the governing body. Quarterly payment.
<b>Bingo and Keno Tax Apportionment</b> MCA 23-5-409	No specific fund or use designated by statute. Statute refers to county treasury. Therefore, the General Fund would appear most appropriate.
<b>Driver License Reinstatement Fees - Distribution to Counties</b> MCA 61-2-107 & 108	For counties with State-approved drinking & driving prevention programs. Must be expended for the county’s drinking & driving prevention program. No specific fund designated by statute. Normally operated through a separate special revenue fund (BARS Fund No. 2811). Quarterly payment.
<b>Department of Military Affairs</b>	
<b>Search and Rescue Reimbursement</b> MCA 10-3-801	<p>To be used for:</p> <ul style="list-style-type: none"> <li>• Reimbursement of costs of search and rescue missions conducted by county sheriff (Maximum of Prior to March 1, 2022: \$6,000 Effective March 1, 2022, through June 30, 2023: \$50,000 Effective July 1, 2023: \$12,000 for each mission) - to be deposited to the fund from which original search and rescue expenditures were made.</li> <li>• Matching grants for equipment (35% local match) – to be deposited in Fund #2382 or other fund used for search and rescue purposes.</li> <li>• Reimbursement of expenses related to training of search and rescue volunteers - to be deposited to the fund from which original search and rescue expenditures were made.</li> </ul> <p>BARS Revenue Code # 335033 – Search &amp; Rescue Funds</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>State Disaster &amp; Emergency Program</b>                      MCA 10-3-311                      MCA 10-3-405                      ARM 34.3.101 to .202</p>	<p>Counties apply to the State for assistance, but only after levying an emergency levy of up to 2 mills. Statutes don't specify fund, but BARS Fund No. 2958 generally used. If federal (FEMA) funding involved, the state/local commitment for reimbursable costs will be set forth in the applicable FEMA/State Agreement.</p>
<b>Department of Public Health and Human Services</b>	
<p><b>Alcoholic Beverage Tax Apportionment</b>                      MCA 53-24-206                      MCA 53-24-108</p>	<p>Must be used for approved private or public programs pertaining to the problems of alcoholism and chemical dependency. The statutes do not specify a specific fund. Normally such programs are operated through a separate Alcohol Rehabilitation Fund (BARS Fund No. 2800) or the General Fund.</p> <p><b>Note:</b> Alcohol tax moneys received by a county that have not been encumbered for these purposes by June 30 must be returned to the State within 30 days after the close of each fiscal year.</p>
<p><b>Child Support Incentive</b>                      (Cooperative agreement with county to provide enforcement services.)                      MCA 40-5-264</p>	<p>No specific fund designated by statute. To General Fund or other fund from which county pays the child support enforcement related costs.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>State Matching Grants for Mental Health Services</b> MCA 53-21-1203</p>	<p>Counties or federally recognized tribal governments must apply for the funds and include a detailed plan for how the county or tribal government and other local entities will collaborate and commit local matching funds for the following mental health services: (a) jail diversion and crisis intervention services, (b) insurance coverage against catastrophic pre-commitment costs, and (c) short-term inpatient treatment. Grant amounts are based upon the historical county use of the state hospital with a high-use county receiving a lower percentage of matching funds.</p>
<b>Department of Revenue</b>	
<p><b>Bentonite Mining Production Tax</b> MCA 15-39-110</p>	<p>Department of Revenue remits payments, to counties in which production occurred, twice a year – on or before October 1, and on or before April 1. A payment may be withheld if, for more than 90 days, a local government fails to: (a) file a financial report (b) remit any amounts collected on behalf of the state (c) remit any amounts owed to the state or another taxing jurisdiction. To be distributed by counties in proportion to current fiscal year mill levies in the taxing jurisdictions in which production occurs, except a distribution may not be made for county levies for school equalization (Elementary 33 mills and HS 22 mills) and state levies (University 6 mills &amp; State equalization 40 mills). BARS revenue code #335131 Note: State law refers specifically to Carter and Carbon counties for this tax allocation.</p>



<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Metalliferous Mines License Tax Apportionment</b>  <i>(See REV-7 for further detail)</i>                      MCA 15-37-117(1)(e)                      MCA 7-6-2226</p>	<p>To be allocated by the county commissioners as follows: not less than 37.5% to the Hard-Rock Mine Trust Fund (BARS Fund No. 2895) established in Section 7-6-2225 &amp; the remainder to be distributed 1/3 to the county to be used for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e), 1/3 to elementary school districts within the county affected by the development or operation of the mine, and 1/3 to high school districts within the county affected by the development or operation of the mine. The county commissioners may establish a Metal Mines License Tax Fund (BARS Fund No. 2896) for the deposit of the money and may hold it in that fund until allocated. They may hold it for any period of time they consider appropriate. A payment may be withheld if, for more than 90 days, a local government fails to: (a) file a financial report (b) remit any amounts collected on behalf of the state (c) remit any amounts owed to the state or another taxing jurisdiction (terminates June 30, 2027).</p>
<p><b>Oil and Natural Gas Production Tax Distribution</b>  <i>(See REV-1 for further detail)</i>                      MCA 15-36-331 &amp; 332</p>	<p>The Department of Revenue determines the taxes paid on oil and natural gas production in the taxing unit, and remits a specific percentage of those taxes on a quarterly basis to the counties. A payment may be withheld if, for more than 90 days, a local government fails to: (a) file a financial report (b) remit any amounts collected on behalf of the state (c) remit any amounts owed to the state or another taxing jurisdiction. The county treasurer distributes these monies to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the schedule prescribed in MCA 15-36-332. In addition, the Custer County treasurer and the Dawson County treasurer make distributions to the countywide community colleges in those counties. The remainder of the monies must be used for the exclusive use and benefit of the county, including districts within the county established by the county.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Oil and Gas Natural Resource Distribution Account</b>                      MCA 15-36-331 &amp; 332                      MCA 90-6-1001(1)                      MCA 15-36-304(7)</p>	<p>Portions of the tax on oil &amp; gas production are deposited to an “oil and gas natural resource distribution account” at the State. The Department of Revenue distributes this account, based on county oil and gas production, on a quarterly basis. Deleted effective July 1, 2019: One-third must be distributed to the county and two-thirds must be distributed to incorporated cities/towns within the county. If there is more than one incorporated city/town within the county, the city/town allocation must be distributed to the cities and towns based on their relative populations. The Department remits the county and city/town portions directly to the county and city/towns. Quarterly distributions are on or before August 1, November 1, February 1, and May 1 of each year. A payment may be withheld if, for more than 90 days, a local government fails to: (a) file a financial report (b) remit any amounts collected on behalf of the state (c) remit any amounts owed to the state or another taxing jurisdiction.</p> <p>No specific fund distribution – discretionary.                      BARS Revenue Code #335065</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Entitlement Share Payment</b> MCA 15-1-120 &amp; 121</p>	<p>The county must allocate a portion of this payment to each fund and special district within the county, in a manner that reasonably reflects each fund’s and special district’s loss of FY 2002 revenue sources. (MCA 15-1-121)</p> <p><b>Note:</b> The 2011 Legislature <u>clarified</u> that the county may <u>not</u> use discretion in the allocation to special districts.</p> <p><b>Note:</b> The entitlement share pool must be increased annually by an annual growth rate calculated by the DOR.</p> <p><b>Note:</b> Tax increment financing districts are not considered local governments for this purpose.</p> <p>Payments must be withheld if a local government (1) fails to meet an annual deadline (annual financial report, audit, budget and fixing tax levy) and (2) fails to remit any amounts collected on behalf of the state or as otherwise required by law within 45 days of the end of a month. A payment may be withheld if, for more than 90 days, a local government fails to: (a) file a financial report (b) remit any amounts collected on behalf of the state (c) remit any amounts owed to the state or another taxing jurisdiction.</p> <p>See MACo’s website at <a href="https://www.mtcounties.org/resources-data/entitlement-share/">https://www.mtcounties.org/resources-data/entitlement-share/</a> for a listing of entitlement share payments by county.</p>
<p><b>Entitlement Funding;</b> applicable only to <b><u>Tax Increment Financing Districts</u></b> in existence during FY2000. (Prior to July 1, 2011, tax increment districts received block grants.) MCA 15-1-121(8)</p>	<p>Payments for each tax increment financing district are itemized in 15-1-121(8). One-half of the payments are made by November 30 and one-half by May 31 of each year. If a tax increment financing district terminates, then the associated funding terminates.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>County Assessor – Reimbursement of 1/2 Wages &amp; Benefits When Department Contracts with County</b>                      Title 15, Ch. 8, Part 1 (Compiler’s Comments - Chapter 27, Sec. 162, Special Legislative Session. Nov. 1993)</p>	<p>The Department of Revenue may, with the consent of the assessor, contract with the county for the assessor to perform assessment work as assigned by the DOR. Under this contract, the County sends a bill to the DOR and the DOR shall reimburse the county, in one lump sum, for 1/2 of the wages &amp; benefits of the assessor. No statute for specific distribution of reimbursement. Should go to county General Fund since assessor is paid from that fund.</p> <p><b>Note:</b> Applicable only for Granite, Powell, and Butte-Silver Bow counties. Petroleum County also is on a similar contract, but the reimbursement may be other than ½. All other county assessors are State employees.</p>
<b>Secretary of State</b>	
<p><b>Reimbursement of Post-Election Audit Costs</b>                      MCA 13-17-508</p>	<p>No specific fund designated by statute, but to General Fund, or other fund from which expenses are originally paid.</p> <p>The Secretary of State will reimburse each county for any costs incurred for postelection audits. However, if a vote-counting machine purchased after 10/1/2009 fails an audit due to software or machine defects or vendor employee error, the vendor is required to reimburse the county for the costs of the postelection audit.</p>
<b>Supreme Court (Office of Court Administrator)</b>	
<p><b>District Court Reimbursement</b>                      MCA 3-5-901 &amp; 902</p>	<p>No specific fund designated by statute. To District Court Fund (General Fund if there is no district court fund) or other fund from which expenses are originally paid.</p> <p>The State (Office of the Court Administrator, Judicial branch) funds all district court costs, except costs for clerks of district court and employees and expenses of those offices, including the costs of providing and maintaining district court office space. If a cost isn’t paid directly by the State, the county will pay the cost and the State will reimburse the county.</p>
<b>Department of Transportation</b>	

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>Gas Tax Allocations</b> <i>(See TRA1 for further details)</i> MCA 15-70-101	Monthly payment. May be deposited to a separate Gas Tax special revenue fund (BARS Fund #2820) or to the County Road Fund. To be used for construction, reconstruction, maintenance, and repair of roads, streets and alleys; or for the matching of federal funds allocated for such purposes. May not be used for capital expenditures (see exception at TRA1). Bidding requirements for contracts in excess of the amounts provided in 7-5-2301 (county contracts)]. ( <b>Note:</b> the bidding requirement for county contracts is applicable to contracts in excess of \$80,000, with some exceptions.)  See MACo's website at <a href="https://www.mtcounties.org/resources-data/county-fuel-tax/">https://www.mtcounties.org/resources-data/county-fuel-tax/</a> for a listing of fuel tax allocations by county.
<b>Gas Tax - Road Construction and Maintenance Match Program</b> MCA 15-70-130	A local government road construction and maintenance match program to provide funding to cities, towns, counties, and consolidated city-county governments for construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, and bridges as provided in 15-70-130. See TRA1 for more information.
<b>State Aeronautics Grants and Loans</b> Title 67, Chapter 1, Part 3 ARM 18.13.401 to .408 (Also applicable to airport authorities)	Cost-sharing grants and low interest loans to be utilized specifically for aviation or aeronautically related projects. Amended amounts and locations for depositing tax proceeds and amended refunding – see MCA 67-1-301(3) to (5)  Aeronautics operations account and grant account – see MCA 67-1-308 & 309
<b>State Aid to Transportation</b> MCA 7-14-102	County Road Fund or another fund must be used for highway or other transportation purposes.
<b>Transportation Services for Senior Citizens and Persons with Disabilities Grant</b> MCA 7-14-112	For transportation services for persons 60 years of age or older and for persons with disabilities. No specific BARS fund designated. We suggest a separate accounting within Senior Citizens Fund (Fund # 2280) or Senior Citizens Transportation Fund (Fund # 2281).

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Courtesy Car Services Grant</b> MCA 67-10-904</p>	<p>For courtesy cars at certain Montana airports where rental cars or taxicabs are not available. The courtesy car may be used only between the airport and the local trading or recreation area, and may not be used across the state line or beyond the local trading or recreation area. The county may procure a <u>Prior to May 12, 2021: sponsor Effective May 12, 2021: third party and assign the Prior to May 12, 2021: sponsor Effective May 12, 2021: third party</u> to a qualified airport to manage the county’s courtesy car program.</p>
<b>State and Federal Grants and Loans</b>	
<p>State grants and loans and selected Federal grants and loans that are passed through State agencies are included above. More detailed information for <u>selected State programs or Federal programs passed through the State</u> can be found indexed under the following specific State Agency tabs:</p> <ul style="list-style-type: none"> <li>Building Code Enforcement Program: <b>L&amp;I1</b></li> <li>Forest Reserve [CFDA #10.665]: <b>ADM1</b></li> <li>Gasoline Tax Apportionment: <b>TRA1</b></li> <li>Hard Rock Mining Impact Trust Account: <b>COM3</b></li> <li>Metalliferous Mines License Tax: <b>REV7</b></li> <li>Oil &amp; Natural Gas Production Tax Distribution: <b>REV1</b></li> </ul> <p><u>Federal grants and loans that are made directly</u> to the local governments are not included in this <i>Compliance Supplement</i>. Please refer to the <i>OMB Circular A-133/UGG Compliance Supplement</i> for compliance requirements and suggested audit procedures for Federal grants and loans.</p> <p><a href="https://www.whitehouse.gov/omb/information-for-agencies/circulars/">https://www.whitehouse.gov/omb/information-for-agencies/circulars/</a></p>	
<b>Local and Other Collections</b>	
<p><b>Note:</b> Except for nontax revenue earmarked for a specific fund, the county treasurer may deposit in the general fund <b>any nontax revenue of \$25 or less</b> received by the county. (MCA 7-6-2207)</p>	
<p><b>Airport fees, rentals, etc.</b> MCA 67-10-404</p>	<p>Airport Fund</p>
<p><b>Ambulance Charges</b> MCA 7-34-103</p>	<p>The statute authorizes the establishment of fees or charges. No specific fund is designated by statute. Normally deposited to Ambulance Fund if established. If not, to general fund or other fund which is used to pay ambulance related expenditures.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Animal Licenses and Fines</b> (Except those collected by a justice court) MCA 7-23-101 &amp; 105</p>	<p>No specific fund designated by statute. To General Fund or other fund from which county pays animal control related costs.</p> <p><b>Note:</b> If fines are collected in Justice Court -See general disposition at “Justice Court - Fines, Penalties, Forfeitures &amp; Assessments of Costs”, below.</p>
<p><b>Board of Prisoners</b> (For prisoners in a detention facility that were arrested by another agency not responsible for the facility) MCA 7-32-2242</p>	<p>No specific fund designated by statute. Commonly would be deposited to the county General Fund, since that is the fund that pays the cost of operating the county detention center. The rate should be agreed upon by the county and the arresting agency. It should cover the reasonable costs of confinement, excluding capital construction costs, except as provided in 7-32-2245 (payments of costs by inmate).</p> <p>Other exceptions at 7-32-2242(2)(b)</p>
<b>Bonds – Sale of:</b>	
<p>Proceeds – GO Bonds MCA 7-7-2260</p>	<p>Construction Fund (to be used for the purpose for which bonds were issued.)</p>
<p>Proceeds – RSID Bonds MCA 7-12-2173</p>	<p>Construction Fund</p>
<p>Proceeds – GO Refunding Bonds MCA 7-7-2312</p>	<p>Deposit to fund used to pay the refunded bonds.</p>
<p>Accrued Interest/Premium MCA 7-7-2112</p>	<p>Sinking and interest (debt service) fund</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Building Code Permit Fees</b>                      (for those counties having a state-certified building code enforcement program)  <i>(See L&amp;I for further detail)</i>                      MCA 50-60-106                      MCA 50-60-302                      ARM 24.301.201 to .231</p>	<p>No specific fund designated by statute (May use BARS Fund No. 2394 or General Fund). May only be used for those costs related to building code enforcement activities as defined in the statutes and ARMs. The county must maintain adequate records to document that permit fees are used only for those costs related to building code enforcement activities. Excess fees may be placed in a reserve to be used in subsequent years. Reserve may be used only for building code enforcement, and may not exceed the amount needed to support the enforcement program for 12 months. Fees must be reduced if necessary to avoid the creation of an excess reserve.</p> <p>If the building code enforcement program is subject to an agreed-upon procedures engagement, there is a mandatory format to be followed.</p>
<p><b>Business (“Z”) Licenses</b>                      MCA 7-21-2105                      MCA 7-21-2303                      MCA 7-21-2404                      MCA 7-21-2503</p>	<p>To be used for any county purpose. No specific fund is designated by statute.</p> <p style="padding-left: 40px;">Itinerant Vendors- \$25/90 days                      Transient Retail Merchants \$25/week                      Hucksters - \$25/6 months</p>
<p><b>Charges for Services</b> deposited to a “Local Charge for Services Fund”</p>	<p><b>See requirements above.</b></p>
<p><b>Clerk of District Court Fees</b></p>	<p><b>See requirements above and CO14 –County Offices/Boards</b></p>
<p><b>Clerk and Recorder Fees</b>                      MCA 7-4-2511(2)                      MCA 7-4-2631 to 2637</p>	<p><b>See CO14 – Counties - County Offices/Boards</b> for a listing of fees collected by the Clerk and Recorder, and their distribution. Generally, all fees collected by the Clerk and Recorder are deposited to the County General Fund. There are, however, exceptions that are discussed in CO14.</p>



<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Coal Gross Proceeds Taxes</b> MCA 15-23-703 to 715</p> <p><b>Note:</b> Taxes on new or expanding mines may be abated under the provisions of MCA 15-23-715.</p> <p>Effective April 8, 2021: After receiving written consent from the Department of Revenue, the governing body of a county or consolidated local government unit may suspend collection of delinquent coal gross proceeds taxes, interest, and penalties and enter into a payment plan that allows a coal producer to make installment payments of the delinquent coal gross proceeds taxes, interest, and penalties. Any taxing authority affected by the suspension may issue gross proceeds obligations under Title 7, chapter 6, part 11, as discussed in CO08.</p>	<p>Generally, and for existing mines, coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990. The county treasurer shall multiply the coal gross proceeds taxes collected in the county by the relative proportions for the state, county, and school districts. Those amounts must be distributed as follows:</p> <ul style="list-style-type: none"> <li>(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;</li> <li>(ii) the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;</li> <li>(iii) the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.</li> </ul> <p>Distribution may change if there is a distribution of coal gross proceeds from a new or expanding surface or underground mine with a tax abatement as provided under 15-23-715, or if the board of county commissioners or the board of trustees of an elementary or high school district reallocate the distribution per MCA 15-23-703.</p> <p>These revenues should be receipted in as BARS revenue source #314200.</p>
<p><b>Concealed Weapon Permit Fees</b> \$50.00 (renewal \$25.00) Fingerprinting - \$5.00 MCA 45-8-321 &amp; 322</p>	<p>May be retained by the sheriff and used to implement the concealed weapon permit process responsibilities under 45-8-321 through 45-8-324. To General Fund since sheriff's department expenditures are paid from that fund.</p>
<p><b>Convenience Fee</b> for selected electronic services MCA 7-5-2133</p>	<p>Although not specified in Statute, the fee collected may be deposited to the fund used to pay for costs related to the provision of the electronic services.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>CREB Project Revenues</b> MCA 90-4-1203 &amp; 1209</p> <p><b>Clean Renewable Energy Bonds (CREBs)</b> may be issued by local governments for various projects that are intended to produce sufficient energy to provide for the local government's needs, allowing excess energy to be sold through the grid. See <b>CO08</b> for additional information.</p>	<p>If the energy produced through a CREB project is more than the local government's own needs, energy may be sold through the grid. Revenues from energy sales may be used for purposes set out at 90-4-1209 including (a) debt service of any bond issues related to the project, (b) maintenance of the reserves required by bond covenants, (c) payment of expenses of operation and maintenance of the project, and (d) to provide a reserve for improvements to the project. The local government may, after these requirements have been fulfilled, transfer remaining project revenues to its general fund.</p>
<p><b>Custom Combine Fee In lieu of Tax</b> - \$35/machine/year MCA 15-24-301(5)</p>	<p>Distributed as other personal property taxes. The machinery is subject to taxation as Class 8 property only if it is sold in Montana.</p>
<p><b>District Court – Fines, Forfeitures, Court Costs, Supervisory Fees &amp; Surcharges</b></p>	<p><b>See requirements above and CO14 –County Offices/Boards</b></p>
<p><b>Driver's License Reinstatement – Administrative Fee - \$25</b> MCA 61-5-214(2)(b) &amp; (4)</p>	<p>Collected by courts and deposited in County General Fund</p>
<p><b>Driver's License Fees:</b> MCA 61-5-111, 114, &amp; 121</p>	<p>See CO03.2 - Motor Vehicle Fees/Taxes</p>
<p><b>Election Filing Fees</b> MCA 13-10-202 MCA 7-4-2511</p>	<p>County General Fund</p>
<p><b>Fair Receipts</b> MCA 7-21-3406, 3409, &amp; 3435 <b>These statutes repealed but still applicable to districts in existence before 7/1/2009. For Districts created after 7/1/2009, see Title 7, Chapter 11, Part 10 and discussion at CO17 – Special Districts</b></p>	<p>Receipts from lease/rental of fairgrounds &amp; buildings deposited to County Fair Fund <b>See also "Lease of County Property" below</b> District fair receipts (when two or more counties combine to form a Fair District) deposited to District Fair Fund of the County in which the District Fair is to be held. <b>See also "User Charges," below</b></p>
<p><b>Fees for Services</b> MCA 7-6-4013</p>	<p>See "User Charges," below</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Fines</b> MCA 3-10-601(3) – general distribution of fines collected in justice courts MCA 46-18-235 – general distribution of fines collected in district courts</p>	<p><b>See CO14 – County Offices/Boards</b> for a listing of fines collected by Justice and District Courts, and their distribution (found at “<b>Justice Court</b>” and “<b>Clerk of District Court,</b>” respectively). <b>Generally</b>, all fines collected in District Court are distributed to the State to be deposited to the state general fund, and all fines collected in Justice Court are distributed 50% to the county general fund and 50% to the state general fund. There are, however, exceptions that are discussed at CO14.</p>
<p><b>Gifts, Donations, Devises, Bequests, etc.</b> MCA 7-8-103 MCA 22-1-309 (library)</p>	<p>Separate trust fund or fund designated by the donor. Must be used for the particular purpose specified. If no particular purpose mentioned, it shall be used for the general support, maintenance, or improvement of the county (general fund).</p>
<p><b>Health Care Facilities -</b> (Hospitals/Medical Assistance Facilities/Long-Term Care Facilities, etc.) <b>&amp; Boarding Homes for the Aged</b> (County-Owned) MCA 7-34-2201 &amp; 2204 MCA 7-34-2301 &amp; 2303</p>	<p><b>Fees for Services:</b> No specific fund designated by statute. To the Healthcare Facilities Fund or another fund that pays health care facility operating expenses. <b>Lease/Rental Receipts:</b> To County General Fund. If, however, bonds have been issued to finance the costs of a health care facility or boarding home, the rental receipts must be applied to the payment of principal or interest on the bonds.</p>
<p><b>Identification Cards</b> (Dept. of Justice) Fee not over \$8 MCA 61-12-504</p>	<p>See CO03.2 - Motor Vehicle Fees/Taxes</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Impact Fees - Electrical Generation Facility</b>                      Title 15, Chapter 24, Part 30</p> <p>MCA 15-24-3001 &amp; 3002 repealed effective October 1, 2021</p>	<p>Repealed effective October 1, 2021: The fees must be distributed to the county and impacted school districts. The county’s portion should be deposited in the Electrical Generation Impact Fund (BARS Fund No. 2898), must be invested, and may be expended for any purpose allowed by law. If the electrical generation facility is located within the jurisdictional areas of multiple local government units, the governments may enter into an interlocal agreement for purposes of distribution of the fees. See 15-24-3005 through 3007 for detailed information regarding the impact fees, allowable rates, and operation of the required funds.</p> <p>Effective October 1, 2021: The governing body of a county receiving impact fees under 15-24-3004(2)(b) or that received impact fees from an electrical generation facility under former 15-24-3005(4) before the amendments in Chapter 13, Laws of 2021, shall establish or hold the collections in the electrical energy generation impact fee reserve account. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.</p> <p>Money may be expended from the account for any purpose of an interlocal agreement provided for in 15-24-3004 or 15-24-3005. The county treasurer shall distribute money in the account to each local governmental unit according to the terms of the interlocal agreement.</p> <p>Money in the account must be invested as provided by law. Interest and income from the investment of the electrical energy generation impact fee reserve account must be credited to the account.</p>
<p><b>Impact Fees – Public Facility Capital Improvements</b>                      Title 7, Chapter 6, Part 16</p>	<p>Impact fees must comply with the provisions of 7-6-1602, and may not include operation or maintenance costs or costs of correcting existing deficiencies. The impact fees should be deposited in BARS Fund No. 2399 and should be invested, with all interest accruing to the fund. Fees should be spent following the impact fee ordinance or resolution.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>Impact Fees - Wind Generation Facility</b> Title 15, Chapter 24, Part 30	A wind generation facility is subject to an initial local governmental and local school impact fee for the first three years after construction begins. The impact fee may not exceed 0.5% of the total cost of construction. Fees should be deposited in the Electrical Generation Impact Fund (BARS Fund No. 2898). Money retained in the fund may not be considered as fund balance to reduce mill levies and must be invested as provided by law, and the interest must be credited to the fund. Money may be expended from the fund for any purpose allowed by law. The fund must be financially administered as a nonbudgeted fund.
<b>Interest Income:</b> Interest on Surplus Deposits or Investments – If not otherwise provided by law or by the terms of a gift, grant, or donation MCA 7-6-204 <b>Note:</b> Specific provisions for other situations listed below.	County General Fund, except: <ul style="list-style-type: none"> <li>• interest earned on the deposits or investments of a volunteer fire district or department, fire service area, or county fire department must be credited to the account of that fire district, service area or department</li> <li>• interest earned on the deposits or investments of any fund separately accounted for by a county <b>may</b> be credited to the separately created fund proportionately to each fund's participation in the deposit or investment.</li> </ul>
MCA 10-4-304	MCA 10-4-304(4) indicates that the funds established in 2017 will retain interest earned from the investment of money in the accounts. Despite the repeal of 10-4-303 and 10-4-312, 10-4-304 requires the same handling of interest.
Interest on Airport Reserve Fund MCA 67-10-402(4) & (5)	Airport Fund, to be used for the operations and maintenance budget of the airport.
Interest on Basic county tax for elementary & high school equalization MCA 20-9-212(12) & (13)	To State
Interest on Bond Proceeds MCA 7-7-2112	Sinking (debt service) Fund
Interest on Capital Improvement Fund MCA 7-6-616	Capital Improvement Fund

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
Interest on County tax in support of the school transportation schedules MCA 20-9-212(12) & (13)	BARS Fund No. 7820 Distributed to school districts within the county – deposited to school transportation funds
Interest on County tax in support of the elementary & high school district retirement obligations MCA 20-9-212(12) & (13)	BARS Fund No. 7830 (H.S.) & Fund No. 7840 (Elem.) Distributed to school districts within the county – deposited to school retirement funds
Interest on Hard-Rock Mine Trust Reserve Account MCA 7-6-2225	County Hard-Rock Mine Trust Reserve Fund BARS Fund No. 2895
Repealed effective October 1, 2021: Interest on Impact Fees - Electrical Generation Facility MCA 15-24-3007	County Electrical Generation Impact Fund BARS Fund No. 2898
Interest on Impact Fees – Public Facility Capital Improvements MCA 7-6-1603	County Impact Fees Fund BARS Fund No. 2399
Interest on Impact Fees – Wind Generation Facility MCA 15-24-3007	County Electrical Generation Impact Fund BARS Fund No. 2898
Interest on Library Depreciation Reserve MCA 22-1-307	Library Depreciation Reserve Fund (County capital projects fund)
Interest on Metal Mines License Tax Account MCA 7-6-2226	County Metal Mines License Tax Account Fund BARS Fund No. 2896
Interest on Oil and natural gas accelerated tax fund MCA 15-36-326	County Oil and Natural Gas Accelerated Tax Fund BARS Fund No. 2897
Interest on Predatory Animal Control Fund MCA 81-7-303 (sheep) MCA 81-7-603 (cattle)	Predatory Animal Control Funds BARS Fund Nos. 2153 (sheep) & 2155 (cattle)
Interest on Protested Tax Payments AGO #60, Vol. 41; MCA 15-1-402	Protested Tax Fund (County custodial fund) until disbursed to applicable funds or taxpayer
Interest on Registered Warrants MCA 7-6-2701(6)	Sinking (debt service) Fund

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
Interest on Road and Bridge Capital Improvement Fund MCA 7-14-2506 MCA 7-6-616	Road and Bridge Capital Improvement Fund
Interest on R.S.I.D. Bond Proceeds MCA 7-12-2173	Construction account of the improvement district fund from which the proceeds were withdrawn. After improvements paid, remaining proceeds & interest to Sinking Fund.
Interest on R.S.I.D. Maintenance Fund MCA 7-12-2175	Fund making investment
Interest on R.S.I.D. Sinking (Debt Service) Fund MCA 7-12-2175	Fund making investment
Interest on Sinking (debt service) Funds MCA 7-7-123	Sinking (debt service) Fund
Interest on Volunteer Firefighter's Disability Insurance Fund MCA 7-6-621	Volunteer Firefighter's Disability Insurance Fund BARS Fund No. 2373
<b>Interlocal Agreements</b> (Receipts) MCA 7-11-108	Determined by the terms of the interlocal agreement
<b>Justice Court - Fees</b>	<b>See CO14 – County Offices/Boards</b> Generally, all fees collected by the Justice Court are deposited to the County General Fund
<b>Justice Court - Fines, Penalties, Forfeitures, Assessments of Costs &amp; Surcharges</b>	<b>See CO14 – County Offices/Boards</b> Generally, all fines, penalties, forfeitures and cost assessments collected by the Justice Court are distributed 50% to the State and 50% to the county general fund. There are, however, exceptions that are discussed at CO14. The collection and distribution of surcharges are also addressed in CO14.
<b>Juvenile Delinquency Intervention</b> (Contribution from parents or guardians covering all or part of costs paid by the county for court-ordered placement of juvenile) MCA 41-5-1525	No fund specified in the statute. We recommend that revenue be deposited in the fund that initially paid for the costs for which the contribution is made.

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Juvenile Placement and Youth Court Intervention and Prevention Allocations</b> MCA 41-5-113, 130, &amp; 132 MCA 41-5-2012</p> <p><b>These receipts are to be classified as charges for services, rather than as intergovernmental revenues.</b></p>	<p>The <u>State Department of Corrections (DOC)</u> allocates to each district court (youth court/juvenile probation office) a budget for <u>juvenile placements and services</u>. The actual funding resides with the DOC and is disbursed by DOC to the various contracted service providers. If the county is a service provider, this funding will be receipted into the county as a contracted charge for service, rather than as an intergovernmental revenue. The unspent portion of this juvenile placement budget is sent to the <u>Court Administrator Office</u>, for the purpose of funding <u>youth court intervention and prevention</u> programs. As with the juvenile placement allocations, this funding resides with the Court Administrator. If the county is a service provider for youth court intervention and prevention purposes, this funding will be receipted into the county as a contracted charge for service.</p> <p>These allocations should be receipted in as BARS revenue source #3410XX, and may not be used for the purposes listed at 41-5-113. State procurement laws apply to the expenditure of these funds.</p>
<p><b>Lease of County Property - Proceeds</b> (not acquired by tax deed) MCA 7-8-2231 &amp; 2232 AGO #33, Vol. 40</p>	<p>May be deposited in county general fund, and may be used for any county purpose, including maintaining or preserving leased property.</p> <p>If the county commissioners are not attempting to sell a county building, monies obtained from tenants in the county-owned building may be used to defray the operational and maintenance costs of such building.</p>
<p><b>Library Fines and Charges</b> Title 22, Chapter 1, Part 3 <b>See also “User Charges”, below</b></p>	<p>No specific fund designated by statute. Commonly deposited to library fund if library operated through a separate library special revenue fund, or to the general fund if library operated through the county general fund.</p>
<p><b>Library Gifts, Donations, Grants, Devises, Bequests, etc.</b> MCA 22-1-309</p>	<p>Must be used for the specific purpose designated. They shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.</p>
<p><b>Liquor License Fees</b> MCA 16-4-503</p>	<p>County General Fund</p>
<p><b>Livestock Per Capita Fees</b></p>	<p>To State</p>
<p><b>Livestock Protective Committee Fee</b> MCA 81-6-104 &amp; 101(5)</p>	<p>Fee in an amount not to exceed \$.50 per head on cattle &amp; sheep; to be deposited in a special fund to be known as the livestock special deputy fund.</p>



<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>Local-option Marijuana Excise Tax</b> MCA 16-12-309 to 312 & 317	<p>Effective January 1, 2022: Only after a successful county election to impose the tax per MCA 16-12-311. Rate may not exceed 3% of the retail value of all marijuana and marijuana products sold.</p> <p>50% retained by county.</p> <p>45% apportioned to the municipalities on the basis of the ratio of the population of the city or town to the total county population.</p> <p>5% to Department of Revenue.</p> <p>Unless otherwise restricted, a county or municipality may appropriate and expend revenue derived from a local-option marijuana excise tax for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax or due to administrative burdens imposed on the municipality as a result of licensing or regulatory requirements.</p> <p>These revenues should be receipted in as BARS revenue source #314150.</p>
<b>Motor Vehicle Fees &amp; Taxes</b>	See CO03.2 - Motor Vehicle Fees/Taxes
<b>Nursing Home Receipts</b>	See “ <b>Health Care Facilities</b> ” above
<b>Park Dedication (Subdivision)</b> MCA 76-3-621	No specific fund designated by statute. Funds must be used for the development, acquisition, or maintenance of parks to serve the subdivision. No more than 50% of the dedicated money may be used for park maintenance. Since use is restricted, it is preferred that the moneys be deposited to a separate Park Fund.
<b>Planning Boards</b> MCA 76-1-408 & 410	<p>No specific fund designated by statute, although because use is restricted to planning purposes, should be deposited to separate BARS Planning Fund No. 2250.</p> <p><u>Fees</u>: Counties that have adopted a growth policy with an infrastructure plan may assess fees as part of subdivision applications or zoning permits. Fees may not exceed \$50 (residential) or \$250 (commercial).</p> <p><u>Donations and Grants</u>: To be used for the purpose designated by the donor.</p>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>Predatory Animal Control Program - Per Capita License Fee</b> MCA 81-7-303 MCA 81-7-603	County Predatory Animal Control Funds BARS Fund Nos. 2153 (sheep) & 2155 (cattle) Expended only for the county's predatory animal control program.
<b>Predatory Animal Control – County Bounty</b> MCA 81-7-201	Fee on all livestock in the county to pay bounties on predatory animals killed. The fee can be assessed when owners of not less than 51% of the livestock in the county petition to the board of county commissioners to impose a fee upon the livestock of the county.
<b>Property Taxes</b>	<b>See CO02-Budgets</b>
<b>Public Administrator Estate Monies</b> <i>(See CO14 for further details)</i> MCA 72-15-205	Public Administrator's Fund (Agency) - BARS Fund No. 7140 – the county treasurer should pay money out of this fund only upon the order of the personal representative, when countersigned by a district judge, and not otherwise.
<b>Public Administrator - Escheated Estates</b>	To State
<b>Refunds</b>	To the fund from which the original payment was made
<b>Rentals, Sale of Maps, Etc.</b>	Deposit to fund that accounts for expenses of the service provided.
<b>Resort Tax</b> MCA 7-6-1501 to 1509 (applies only to those areas which have been designated as resort areas by the Dept. of Commerce)	Petition or resolution required by Section 7-6-1504 must state the tax rate (up to 3%) & purposes that may be funded by resort tax revenues. Voter approval is required. Revenue must be expended for the purpose stated in the resolution that established the resort area. An election petition may provide for an additional resort tax at a rate of up to 1% in communities with a population less than 5,500. (MCA 7-6-1503(b)(i)).  If the petition or resolution includes the additional tax provided for in 7-6-1503(1)(b)(i), the revenue from the additional tax must be designated for infrastructure, and the specific uses must be identified in the petition or resolution. The additional levy for infrastructure authorized under this subsection (4)(d) terminates when the specified infrastructure debts and project costs are paid unless the board submits, and the qualified electors approve another levy for infrastructure. (MCA 7-6-1504(4)(d))

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>Restitution Payments</b> (When victim’s location is unknown) MCA 46-18-250</p>	<p>Deposited to the county restitution fund. Money in this fund may be used to:</p> <ol style="list-style-type: none"> <li>(1) Pay the victim when the victim’s whereabouts become known.</li> <li>(2) Provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to. The offender may perform community service, for which the victim shall receive an amount equal to the minimum hourly wage.</li> <li>(3) Refund money to the state crime victims’ compensation and assistance account if payments have been made to or on behalf of the victim from this account.</li> </ol>
<p><b>Rodent Control receipts</b> (If rodent control district created) MCA 7-22-2221 to 2226</p> <p><b>These statutes repealed, but still applicable to districts in existence before 7/1/2009. For Districts created on or after 7/1/2009, see Title 7, Chapter 11, Part 10 – see discussion at CO17 – Special Districts</b></p>	<p>Payments and reimbursements received for material, equipment, and services supplied by the board are deposited to a rodent control district fund. To be used only for district administrative costs and expenses of establishing and implementing a rodent abatement program.</p>
<p><b>Sale of County Property - Proceeds</b> MCA 7-8-2220 MCA 7-8-2515</p>	<p><u>Personal Property</u> To any fund that is in the best interest of the county, at the discretion of the county commissioners. MCA 7-8-2220</p> <p><u>Real Property</u> Proceeds must be deposited in the county’s general fund. MCA 7-8-2515</p> <p>Exception: Revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund [BARS fund #2210] and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication. MCA 7-8-2515(2)</p>
<p><b>School Districts:</b></p>	

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
Basic County Taxes for Elementary Equalization (33 mills) and High School Equalization (22 mils)	To State
County Tax in Support of the Transportation Schedules MCA 20-9-212 MCA 20-10-146	Apportioned to the school districts in the county, as determined by the County Superintendent of Schools.
County Tax in Support of the Elementary and High School District Retirement Obligations MCA 20-9-212 MCA 20-9-501	Apportioned to the school districts in the county, as determined by the County Superintendent of Schools
Guaranteed Tax Base Payments MCA 20-9-368	Received from OPI in support of the retirement fund budgets of the elementary and high school districts in the county. Not revenue to the County; BARS revenue code 335300 used to facilitate the Treasurer's recording of these payments.
<b>Sheriff's Fees</b> (including mileage, if vehicles provided & maintained by county)	<b>See CO14 – County Offices/Boards</b>
<b>24/7 Sobriety Program – Law Enforcement Agency Fees</b> MCA 44-4-1206 ARM 23.18.306 & .307 BARS revenue #342014	In those counties that have implemented a sobriety program pursuant to rules established by the State Department of Justice: Testing fees collected by the county law enforcement agency shall be deposited, distributed, and used pursuant to terms determined by the law enforcement agency, in accordance with DOJ rules.
<b>Solid Waste Management District Fees</b> MCA 7-13-231 to 234 <b>These statutes repealed, but still applicable to districts in existence before 7/1/2009 For Districts created on or after 7/1/2009, see Title 7, Chapter 11, Part 10 – see discussion at CO17 – Special Districts</b>	Solid Waste Management District Fund
<b>State Airport Tax - 90%</b>	To State

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<b>State-wide Levies:</b> State Equalization Aid Levy (40 mills) University System Tax Levy (6 Mills) Vo-Tech Millage (1 ½ Mills)	To State
<b>Tax Deeds:</b> <i>(See CO15 for further detail)</i>	
Issuance Fees (\$25) MCA 15-18-211(2)(a)  Assignee Application fee (\$25) MCA 15-18-219 MCA 15-17-911(4)(a) MCA 7-6-2131	County General Fund
Lease of Tax Deed Lands MCA 7-8-2306(3)	Distributed on current year's tax levies
Royalty Interest Proceeds MCA 7-8-2306(2)	County General Fund, except that the county commissioners may allocate not more than 50% to the County Road Fund.
Sale of Tax Deed Lands MCA 7-8-2306(1)	County General Fund is first reimbursed for expenditures made for procurement of the tax deed and holding of the sale. If balance remaining, and the balance is: <ol style="list-style-type: none"> <li>a. in excess of the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty and interest, then as much of the remaining proceeds must be credited to each fund or purpose as each fund or purpose would have received had the taxes been paid before becoming delinquent, and all excess must be credited to the county general fund; or</li> <li>b. less in amount than the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty or interest, the proceeds must be prorated between the funds and purposes.</li> </ol>

<b>SOURCE, DISTRIBUTION &amp; USE OF COMMON REVENUES/RECEIPTS</b>	
<b>Source and Statute, Rule or Regulation</b>	<b>Distribution/Use</b>
<p><b>User Charges:</b> General Fees for Services MCA 7-6-4013</p> <p><b>See also Charges for Services Deposited to a Local Charge for Services Fund</b></p>	<p>No specific fund designated by statute. Such charges should be deposited to the fund that makes the expenditures related to the services provided.</p> <p>If a local government has the authority to regulate, establish, and change fees, rates, charges, and classifications that are imposed for services, the fees, rates, charges, and classifications must be reasonable and related to the cost of providing the service. To establish or change fees, rates, charges, or classifications, the governing body shall order a hearing to be held, notice of hearing must be published, and the fees, rates, etc. must be established by resolution of the governing body.</p> <p>Municipal utility rate hearings must be held-MCA 69-7-112.</p>
<p><b>Veterans' Cemetery</b> – gifts, grants, donations, and/or charges MCA 7-35-2205</p>	<p>County Veterans' Cemetery Fund - BARS Fund No. 2241</p>
<p><b>Weed Spraying &amp; Herbicide Sales</b> MCA 7-22-2142(4)</p>	<p>Noxious Weed Fund <b>See also CO14 – County Offices/Boards</b></p>
<p><b>Wildland Fire Protection Assessments</b></p>	<p>To State</p>



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**MOTOR VEHICLE FEES, TAXES, &  
DISTRIBUTION SCHEDULE**

REVISION JANUARY 2022

REF: CO03.2

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## **GENERAL**

In general, the motor vehicle fees and taxes in the following schedule are collected by the County and remitted in total to the State, and local governments are reimbursed for these lost revenues through the State Entitlement Share (MCA 15-1-121). Some exceptions to this general rule do exist, however, as indicated in the following schedule. If the distribution is to the County, the fee/tax will be recorded as revenue to the County. If the distribution is to the State, the amount will be recorded only as a receipt in a custodial fund.

## **MERLIN SYSTEM & THE COUNTY COLLECTION REPORT TO THE STATE**

Counties currently use the Department of Justice's computer system – the Montana Enhanced Registration & Licensing Information Network (MERLIN) for motor vehicle collections. MERLIN's ATMM module functions as an accounting application utilized by both the counties and the State. Motor vehicle transactions are entered into the MERLIN system as they occur, and the appropriate journal entries are created by MERLIN at that time. Within MERLIN, the county completes a daily reconciliation and a consolidation that moves the daily journal entries to a non-operational level for the County. At the end of the month, the county completes a month-end consolidation within MERLIN that moves those general ledger entries to the State level for processing. This consolidation and movement of general ledger entries to the State takes the place of the "County Collection Report to the Department of Justice" that was separately remitted in prior years.

## **PERMANENT REGISTRATION**

The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in 61-3-321(2), may permanently register the light vehicle upon payment of:

- a. an \$87.50 registration fee,
- b. the applicable registration and license fees under 61-3-412,
- c. if applicable, the administrative fee and the annual one-time-only donation fee for a generic specialty license plate under 61-3-480 or collegiate license plates under 61-3-465,
- d. an amount equal to five times the local option motor vehicle tax or flat fee on vehicles under 61-3-537 and,
- e. as applicable, either the original fee and four times the renewal fee for personalized plates; or five times the renewal fees for personalized plates; or if a new set of license plates is not being issued, an insurance verification fee of \$5.
  - a. In addition to the fees described above, an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the GVW fees imposed under 61-10-201.
  - b. The owner of a motor vehicle that is permanently registered under this section is not subject to additional registration fees or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle. A permanent registration may not be transferred to a new owner.



MCA 61-3-562

### **REPLACEMENT OF LICENSE PLATES**

License plates issued on or after January 1, 2010, must be replaced with new license plates if, upon renewal of registration under 61-3-312, the license plates are 5 or more years old or will become older than 5 years during the registration period. Effective October 1, 2021: License plates issued to a disabled veteran with a combat-related disability must be replaced with new license plates if, on renewal of registration under 61-3-312, the license plates are 10 or more years old or will become older than 10 years during the registration period. New license plates must be issued in accordance with the implementation schedule adopted by the department under 61-14-101. A vehicle owner may elect to keep the same license plate number from license plates issued before January 1, 2010, when replacement of those plates is required under this subsection. A light vehicle or a motor home that is permanently registered may display the license plate and plate design in effect at the time of registration for the entire period that the light vehicle or motor home is permanently registered. These provisions do not apply to a travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer.

MCA 61-3-332(3)

### **FORMS OF PAYMENT**

The county may accept payment of any fee, tax, or penalty by credit card, debit card, electronic funds transfer, or other commercially acceptable means. However, the amount isn't considered paid until the county treasurer receives payment from the financial institution or credit card company. Upon receipt of the payment, the amount is considered paid on the date on which the charge was made by the person. If notice of nonpayment is received, the county may charge the person who attempted the payment an additional fee which must be added to, and collected in the same manner as, the fee, tax, or penalty due.

MCA 61-3-117

### **EXEMPTIONS**

POWs, disabled veterans, and spouses thereof are exempt from many of the taxes and fees listed in this section.

MCA 61-3-321(16), MCA 61-3-460

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>TAXES &amp; FEES IN LIEU OF TAXES</b>			
<p><b>Local Option Motor Vehicle Tax or Fee</b> - applies only to light vehicles subject to registration fees (see below)</p>	<p><b>Tax</b> - Up to .07% of depreciated value determined under 61-3-503</p> <p><b>Fee</b> - in an amount determined by the county commissioners and approved by the electorate</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• This tax or flat fee must be approved by the electorate of the county.</li> <li>• If permanent registration, 5 times this fee.</li> </ul>	<p>50% to county (BARS Rev #314140); Remaining 50% to county and incorporated cities and towns in the county, apportioned on the basis of population. County distribution determined by commissioners' resolution. Because the statute is silent as to the city/town's distribution, it appears that a city/town may determine the distribution of their share of this apportionment.</p>	<p>MCA 61-3-537 MCA 61-3-570 MCA 61-3-562(1) (perm reg)</p>
<p><b>Fee in Lieu of Tax - Buses, Trucks over 1 ton, and Truck Tractors</b> (This fee is <u>in addition</u> to annual registration fees.)</p>	<p>Fee Schedule - based on age &amp; manufacturer's rated capacity of vehicle.</p>	<p>To be remitted to the State</p>	<p>MCA 61-3-529</p>
<b>TITLES</b>			
<p><b>Title Fee</b></p>	<p>Effective October 1, 2017: \$12 - Light - 1 Ton or less \$10 - Heavy - Over 1 Ton</p> <p>Effective 7/1/2028: \$7 - Light - 1 Ton or less \$5 - Heavy - Over 1 Ton</p>	<p>To be remitted to the State</p>	<p>MCA 61-3-203</p>

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>Duplicate Title Fee &amp; Title Correction Fee</b>	\$10 <b>Effective 7/1/2026: \$5</b>	To be remitted to the State	MCA 61-3-204
<b>Manufactured Home - De-Title Fee</b>	\$10 <b>Effective 7/1/2028: \$5</b>	To be remitted to the State	MCA 15-1-116 MCA 61-3-203
<b>Late fee – transfer of title</b>	\$10	To be remitted to the State	MCA 61-3-220(4)
<b>Lien Filing Fee</b>	<u>Effective July 1, 2021:</u> <u>Lien Filing Fee - \$8</u> <u>Reissuance of title without lien shown on face - \$10</u> <b>Effective 7/1/2034: \$5</b>	To be remitted to the State	MCA 61-3-103(8) MCA 61-3-103(9) - reissue
<b>State Assigned Vehicle Identification Number (VIN) Fee</b>	\$5.00	To be remitted to the State	MCA 61-3-107(2)

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>REGISTRATIONS</b>			
<p><b>Registration Fees - Annual Registration</b></p> <p><b>Note: Optionally,</b> light vehicles &amp; motor homes 11 years or older may be registered permanently – see below</p> <p>MSRP = Manufacturer’s Suggested Retail Price</p>	<p><u>Light Vehicles; Trucks, Buses &amp; Logging Trucks under 1 ton:</u></p> <p>4 yrs or less - \$217                      5 to 10 yrs - \$87                      11 yrs or more - \$28</p> <p>Effective January 1, 2018: 10 yrs or less and MSRP more than \$150,000 – add \$825</p> <p><u>Trucks, Buses &amp; Logging Trucks over 1 ton:</u> \$22.75</p> <p><u>Motor Homes:</u></p> <p>Less than 2 yrs - \$282.50                      Under 5 yrs - \$224.25                      Under 8 yrs - \$132.50                      8 yrs &amp; older - \$97.50</p> <p>Effective January 1, 2018: 10 yrs or less and MSRP more than \$300,000 – add \$800</p>	<p>To be remitted to the State</p>	<p>MCA 61-3-321(2), (6), (7), &amp; (24)                      61-3-509 (distribution)</p>
<p><b>Registration Fees - PERMANENT Registration (optional)</b></p> <p>Applicable only to light vehicles and motor homes that are <u>11 yrs or older</u>. Upon transfer of ownership, fees must be paid by new owner.</p>	<p><u>Light vehicle</u> - \$87.50  <u>Motor home</u> - \$237.50</p>	<p>To be remitted to the State</p> <p><b>Note:</b> Except for local option tax/fee which is retained by county and apportioned to county/cities (see above).</p>	<p>MCA 61-3-321(2) &amp; (7)(b)                      MCA 61-3-562</p>

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<p><b>Registration Fees – One-Time Registration (i.e., Permanent registration required)</b></p> <p>These fees are one-time fees, except upon transfer of ownership, at which time the new owner must pay the one-time fee also.</p> <p>OHV = Off-Highway Vehicle MC = Motorcycle QC = Quadricycle</p>	<p>OHV's - \$61.25</p> <p>MC/QC: Hwy use only - \$53.25 Effective May 7, 2019: Off-hwy use only - \$53.25</p> <p>Hwy &amp; off-hwy (dual) use - \$114.50</p> <p>Travel Trailers: Under 16 ft - \$72 16 ft or over - \$152</p> <p>Boats (motorboat, sailboat, personal watercraft, or motorized pontoon): Under 16 ft - \$65.50 Under 19 ft - \$125.50 19 ft or over - \$295.50</p> <p>Snowmobile: Personal use- \$60.50 Rental (yr 1) - \$40.50 Rental (yr 2) - \$20 Rental (yr 3 = perm.) - \$60.50</p> <p>Trailer, Semitrailers, Pole Trailers: Under 6,000 lbs - \$61.25 6,000 lbs &amp; over - \$148.25</p> <p>Low-speed electric vehicles &amp; golf carts - \$25</p>	<p>To be remitted to the State</p>	<p>MCA 61-3-321(3), (5), (8), (9), (10), (11), &amp; (12)</p> <p>MCA 61-3-509 (distribution)</p>
<p><b>Registration Fee - Highway Patrol Pay and Retention</b> – Applicable to all vehicles</p>	<p>Prior to May 22, 2017: \$5 Effective May 22, 2017: \$10</p>	<p>To be remitted to the State</p>	<p>MCA 61-3-321(20)</p>

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>State Parks Fee –</b> Applicable to light vehicles only	\$9 <b>Note:</b> This fee is optional – at the time of registration a person may make a <u>written</u> election not to pay it.	To be remitted to the State	MCA 61-3- 321(19)
<b>Duplicate Registration (Lost Certificate) Fee</b>	\$2	To be remitted to the State	MCA 61-3-341
<b>Snowmobile: Duplicate Decal Fee</b>	\$1	To be remitted to the State	MCA 23-2-617
<b>Off-Highway Vehicles (OHV): Duplicate Decal Fee</b>	\$5	To be remitted to the State	MCA 23-2-809
<b>Motorcycle Registration Fee for Safety Training</b>	\$16	To be remitted to the State	MCA 61-3- 321(8)
<b>Custom-Built Motorcycle Registration Fee</b>	\$10 <b>Note:</b> This fee is <i>in addition</i> to regular registration fee in 61-3- 321	To be remitted to the State	MCA 61-3-319
<b>New Issue Plate Fee</b> Standard – set or single <b>Note:</b> No charge for transfer of plates	\$10 An <b>additional \$15 fee</b> if owner elects to keep same plate number from plates issued before 1/1/2010, when replacement of plates required under 61-3- 332(3) (See Notes, above)	To be remitted to the State	MCA 61-3- 321(13)

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>PLATES</b>			
<b>Personalized Plates</b>	original - \$25 renewal/transfer - \$10 <b>If permanent registration:</b> <ul style="list-style-type: none"> <li>• Newly issued: \$65 (original fee of \$25 and 4 times the renewal fee of \$10)</li> <li>• Renewal: \$50 (5 times the renewal fee)</li> </ul>	To be remitted to the State	MCA 61-3-406 & 407 (in combination with other specialty plates) MCA 61-3-562(1) (perm reg)
<b>Custom Vehicle or Street Rod Single License Plate</b> <u>Note:</u> this fee in addition to other registration fees/taxes	\$10	To be remitted to the State	MCA 61-3-320 (b) or (d)
<b>Amateur Radio (HAM) Plate Fee</b>	\$5	To be remitted to the State	MCA 61-3-422 & 426 (in combination with other specialty plates)
<b>Military Affairs Veterans Cemetery Plate Fee</b>	\$10	To be remitted to the State	MCA 61-3-458 to 460
<b>Collegiate License Plates</b>	Initial application: \$10 Annual fee: \$30	Initial application to be remitted to State Annual fee to be remitted to the State (designated for specific institution)	MCA 61-3-465
<b>Collector's items – Pioneer/Vintage Registration &amp; Plates</b> (Permanent registration)	Registration/Plate Fees: 2850 lbs & over - \$10 Under 2850 lbs - \$5 Inspection Fee - \$5 Application Fee - \$20	To be remitted to the State	MCA 61-3-411 MCA 61-3-321(4) MCA 61-3-412(2) – inspection fee MCA 61-3-412(6) – application fee

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>Duplicate Tab Fee</b>	\$10	To be remitted to the State	MCA 61-3-333(1)
<b>Duplicate Plate Fee</b> <u>Note</u> : Replaces original plates with substitute plates that are exactly the same.	\$15	To be remitted to the State	MCA 61-3-333(2)
<b>Replacement Plate Fee</b> <u>Note</u> : Replaces original plates with substitute plates that aren't exactly the same.	\$10	To be remitted to the State	MCA 61-3-333(1)
<b>Duplicate Personalized, Pioneer/Vintage, and Centennial Plates</b>	\$10	To be remitted to the State	MCA 61-3-333
<b>Special Motorcycle Plates - Chronically or Critically Ill Children ("Chrome for Kids")</b> <u>Note</u> – this is considered to be a type of generic specialty plate	Administrative fee - \$5 License Plate fee - \$5 Annual donation - \$20	Administrative fee deposited to County General Fund (BARS Rev #341060) License plate fee and annual donation to be remitted to the State.	MCA 61-3-415



<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<p><b>Generic Specialty License Plates</b> (Applicable for any vehicle except a MC or QC) <b>The following are also generic specialty license plates:</b> <b>Lewis &amp; Clark Bicentennial Plates</b> - sponsored by the L &amp; C Bicentennial Commission (2001). <b>Patriotic Plates</b> - sponsored by Military Affairs, Board of Veterans' Affairs.</p>	<p><u>Administrative fee</u>: \$20 <u>Donation</u> in an amount required by the sponsor of the generic specialty license plate</p> <p>L &amp; C Bicentennial Plate Donation - \$20 Patriotic Plate Donation (Surcharge) - \$15 <b>Note:</b> These donations/surcharges are in addition to the Administrative fee of \$20 above</p>	<p>\$20 administrative fee: \$5 to County General Fund \$5 to State General Fund \$10 to State Vehicle Insurance Verification &amp; License Plate Operating Account</p> <p>Donation amount remitted to the State to be distributed monthly to the respective sponsors.</p>	<p>MCA 61-3-480 MCA 2-15-151 (L&amp;C Bicentennial) MCA 10-2-114 (Patriotic)</p>
<p><b>Special Motorcycle License Plates – Military/Veteran</b></p>	<p>Administrative fee - \$5 License plate fee - \$5 Veterans' Cemetery fee - \$10</p>	<p>\$5 admin. fee – County General Fund \$5 license plate fee – State General Fund \$10 Vets' Cemetery fee – State Vets Cemetery Account</p>	<p>MCA 61-3-414 &amp; 459(2)</p>
<b>SPECIAL REGISTRATIONS &amp; MISCELLANEOUS FEES</b>			
<p><b>Medical Professional – Registration Exemption Decal Fee</b></p>	<p>\$2</p>	<p>To be remitted to the State</p>	<p>MCA 61-3-707</p>

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>Gross Vehicle Weight (GVW)</b> – applies to trucks, , truck tractors & buses	See Fee Schedules at 61-10-201 (If monthly & quarterly payments - \$5 additional fee at time of payment) <b>Note:</b> For permanent registration, 5 times this fee. <b>Note:</b> A fee equal to 35% of the regular GVW fee (minimum fee of \$6) is required for certain farm vehicles – 61-10-206)	To be remitted to the State	MCA 61-10-201 & 209 MCA 61-10-225 (distrib) MCA 61-3-562(2) (perm reg)
<b>Temporary Registration Permit (TRP)</b>	\$19.50 - resident \$24.50 - non-resident or a person using an electronic interface \$24 - 90-day TRP when new owner cannot surrender previously assigned certificate of title	To be remitted to the State	MCA 61-3-224(5)
<b>Temporary Registration Permit – Fertilizer Spreader Special Demonstration Permit</b>	\$50 <b>Note:</b> This fee is in addition to the temporary registration permit discussed above in 61-3-224	To be remitted to the State	MCA 61-3-431(1)(b) & (2)(b)
<b>Single Movement Permit Fee</b>	\$5	To be remitted to the State	MCA 61-4-310
<b>Special Mobil Equipment Fee</b>	\$5	To be remitted to the State	MCA 61-3-431(1)(a) & (2)(a)
<b>Postage Fee for Registration by Mail</b>	As indicated on registration card	To the County General Fund (no statute for specific distribution) – BARS Rev # 341060	MCA 61-3-535
<b>Notary Fee</b>	Suggested	To the County General Fund (no statute for specific distribution) – BARS Rev # 341060	No specific legal reference

<b>MOTOR VEHICLE FEES/TAXES AND DISTRIBUTION SCHEDULE</b>			
<b>Description</b>	<b>Charge</b>	<b>Distribution</b>	<b>Legal Reference</b>
<b>Convenience Fee</b>	Varies	To the County General Fund (no statute for specific distribution) – BARS Rev # 341060	MCA 61-3-116 MCA 7-5-2133
<b>Organ Donation Awareness and Traumatic Brain Injury Awareness</b>	Voluntary donations of \$1 or more	To be remitted to the State	MCA 61-3-303(6)
<b>VIN Inspection Fee – Salvage Vehicle</b>	\$18.50	To be remitted to the State	MCA 61-3-223
<b>Insurance Verification Fee</b>	\$5	To be remitted to the State	MCA 61-6-158 MCA 61-3-321(7)(b)(ii) MCA 61-3-562(1)(a)(ii) (perm reg)
<b>DRIVER'S LICENSE FEES &amp; DEPARTMENT OF JUSTICE ID CARDS</b>			
<b>Drivers' License Fees</b>	Basic Driver License - \$5 MC Endorsement - \$.50 Commercial License: Interstate - \$10 Intrastate - \$8.50 Replacement License - \$10 Renewal Notice - \$.50	To the County General Fund – (BARS Rev #341060): 2.5% of Basic 3.34% of MC endorsement 2.5% of Commercial 3.75 of Replacement To be remitted to the State: Remainder of above fees 100% of Renewal Notice	MCA 61-5-111(6) MCA 61-5-114 (replacement) MCA 61-5-121 - fee disposition
<b>Dept. of Justice ID Cards</b>	ID card expires on person's birthday 8 years after card's issue date <u>Exception:</u> ID card issued to person under 21 expires on person's birthday 4 years after card's issue date – <b>fee is \$8</b>	To be remitted to the State	MCA 61-12-504



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**CASH & INVESTMENTS**

REVISION JANUARY 2022

REF: CO04

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## **COUNTY TREASURER AS CUSTODIAN OF PUBLIC MONEY**

The county treasurer shall:

- a) receive, disburse, and serve as the custodian of all money belonging to the county and all other money directed to be paid to the treasurer by law;
- b) safely keep the money, apply and pay the money out, and account for the money as required by law;
- c) provide for accountability of all local government cash receipts and for deposits and investments of all departments, offices, and boards;
- d) pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants; and
- e) require periodic departmental reports of money receipts and their disposition on forms that the county treasurer prescribes.

MCA 7-6-2111(1), MCA 7-6-612(3)

The county treasurer shall keep an account of (a) the amount and the time when, from whom, and on what account all money was received; and (b) the amount and time when, to whom, and on what account all disbursements were made.

MCA 7-6-2111(2)

**Rural Fire District Money:** All money received by rural fire district trustees must be deposited in the county treasurer's office and credited to the fire district.

MCA 7-33-2105

**Special District Money:** All money received by a special district, including interest and earnings accrued, must be deposited in an account held only for the special district by the office of the county treasurer, city treasurer, or town clerk. **See CO17, Special Districts, for listing of special districts for which this provision is or is not applicable.**

MCA 7-11-1026(2)

**Note:** A county-supported search and rescue unit that, pursuant to MCA 7-32-235(3), receives tax money may maintain private bank accounts for nontax sources. The county sheriff does not control the finances of a search and rescue unit.

AGO #10, Vol. 44

## **DEPOSIT OF PUBLIC FUNDS IN FINANCIAL INSTITUTIONS**

Except as provided in the following MCA sections below, it is the duty of all county treasurers to deposit all public money in their possession and under their control only in solvent banks, building and loan associations, savings and loan associations, or credit unions. The county commissioners may deposit public money not necessary for immediate use in a savings or time deposit with any of these authorized financial institutions or in a repurchase agreement as authorized in 7-6-213.

MCA 7-6-201(1) & (2)

Other provisions:

- a) MCA 7-6-202 – obligations of the United States
- b) MCA 7-6-206 – time & savings deposits or repurchase agreements
- c) MCA 7-6-2701 – registered warrants of entities located in the same county

## **INVESTMENT IN OBLIGATIONS/AGENCIES OF THE UNITED STATES**

- (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:
  - (a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;
  - (b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or
  - (c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):
    - (i) federal home loan bank;
    - (ii) federal national mortgage association;
    - (iii) federal home mortgage corporation; and
    - (iv) federal farm credit bank.
- (2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.
- (3) The local governing body may invest in a United States government security money market fund if:
  - (a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;
  - (b) the fund consists only of eligible securities as described in this section;
  - (c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;
  - (d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and
  - (e) the fund's average maturity does not exceed 397 days.
- (4) Except as provided in subsections (5) and (6), an investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

- (5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.
- (6) An investment in zero-coupon United States government treasury bills, notes, and bonds purchased as a sinking fund investment for a balloon payment on qualified construction bonds described in 17-5-116(1) may have a maturity date exceeding 5 years if:
  - (a) the maturity date of the United States government treasury bills, notes, and bonds is on or before the date of the balloon payment; and
  - (b) the school district trustees provide written consent.
- (7) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.

MCA 7-6-202

### **SHORT-TERM INVESTMENT POOL (STIP)**

Provisions of 7-6-202 may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.

MCA 7-6-202(6)

The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the Board of Investments (BOI). Included in the separate investment funds that must be maintained in the unified investment program is a pooled investment fund.

MCA 17-6-201(1) & 203(3)

The governing body of any city, county, school district, or other local government unit or political subdivision that has funds that are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit the funds to the state treasurer for investment under the direction of the BOI as part of the short-term pooled investment fund.

MCA 17-6-204

STIP is no longer managed as a 2a7-like portfolio. The investment portfolio consists of securities with maximum maturity of 2 years or less. The BOI utilizes Net Asset Value (NAV) to report its investments at fair value in its own financial statements. Local government monthly statements provide amortized cost values. For year-end reporting, BOI provides a "NAV factor" to be applied to the amortized cost amount, to arrive at the fair value of the local government's investment.

- a) Share prices are fixed at \$1 per share.
- b) To initiate a buy or sell of STIP shares, one business day's notice is required.
- c) STIP income is distributed on the first calendar day of each month. Shareholders have the option to automatically reinvest their distribution income in additional shares.
- d) For additional information on STIP, go to <https://www.investmentmt.com/STIP/>

## **LONG-TERM INVESTMENT OF LOCAL GOVERNMENT FUNDS**

- (1) The governing body of any city, county, school district, or other local government unit or political subdivision may participate in the various investment pools or other investments offered by the board of investments not otherwise prohibited by law.
- (2) A local government may invest with the board of investments under this section if:
  - (a) the source of the original principal for investment with the board is from an identifiable action or event such as a legal settlement, judgment, bequest, insurance settlement, trust fund, or other one-time source of funds;
  - (b) the local government does not anticipate the need to expend 50% or more of the original principal for investment within 5 years from the initial investment with the board;
  - (c) the initial investment is at least \$10 million; and
  - (d) the local government agrees to the board's investment policies, including those addressing liquidity needs, risk and return considerations, asset allocation, permissible investments, and any other necessary investment considerations or limits.
- (3) The board of investments is not obligated to accept any funds for investment under this section. No local government is obligated to invest with the board under this section.

MCA 17-6-205

## **DEMAND DEPOSITS**

Demand deposits may be placed only in banks.

MCA 7-6-205

## **TIME & SAVINGS DEPOSITS & REPURCHASE AGREEMENTS**

Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213 (see below).

MCA 7-6-206(1)

**Bidding Provisions:** The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration. Money placed in repurchase agreements is also subject to these provisions.

MCA 7-6-206(1) & (2)



**Out-of-State Certificates of Deposit:** In addition to other investments authorized above, public money not necessary for immediate use by a county, city, or town may be invested in accordance with the following conditions:

- (a) the money is initially invested through a federally insured financial institution in the state selected by the governing body;
- (b) the selected in-state financial institution arranges for the deposit of the funds in an account of the county, city, or town in one or more federally insured financial institutions, regardless of location;
- (c) the full amount of principal and accrued interest on each deposit is covered by federal deposit insurance; and
- (d) the selected in-state financial institution acts as the custodian for the county, city, or town with respect to the deposit issued for its account.

MCA 7-6-206(3)

**Repurchase Agreements:** A financial institution may contract with a local governing body to establish one or more repurchase agreements, including daily repurchase agreements.

MCA 7-6-213

A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms. A repurchase agreement is not a demand account.

The local governing body may maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

**Bidding Provisions:** The local governing body shall call for bids as provided in 7-6-206 (see above) to contract for a repurchase agreement from all financial institutions chartered to do business in the state of Montana which are authorized to accept demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration and range of funds to be invested. There is no express or implied limitation on a county treasurer's ability to use the services of an investment or brokerage firm to purchase approved securities; however, an investment company may not be used in making demand or time deposits because that form of transaction is restricted to banks, savings and loan associations, and credit unions.

AGO #25, Vol. 42.

## **INTEREST RATES ON DEPOSITS OF PUBLIC MONEY**

The bank, building and loan association, savings and loan association, or credit union in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms. Refusal by an institution to pay said interest rate shall constitute a waiver of that institution's right to participate in the deposit of public funds.

MCA 7-6-203

## **DEPOSIT INSURANCE COVERAGE**

**Federal Deposit Insurance (FDIC):** FDIC insurance covers all deposit accounts placed in banks and savings associations, including checking and savings accounts, money market deposit accounts and certificates of deposit. For detailed information on deposit insurance for accounts held by government depositors, see: <http://www.fdic.gov/deposit/deposits/FactSheet.html>

**Official Custodian:** A public unit (including a political subdivision) is insured through its official custodian. If the same individual is an official custodian for more than one public unit, he or she is separately insured for the deposits belonging to each public unit. Deposit insurance coverage cannot be increased by dividing funds among several putative official custodians who lack plenary authority over such funds. Likewise, coverage cannot be increased by dividing funds among several accounts controlled by the same official custodian for the same public unit.

All **time and savings deposits** (including NOW accounts and money market deposit accounts but not interest-bearing demand deposit accounts, which were permitted after July 21, 2011) owned by a public unit and held by the public unit's official custodian in an insured depository **institution within the State** in which the public unit is located are added together and insured up to \$250,000.

Separately, all **demand deposits** (including both interest-bearing and noninterest-bearing deposits that are payable on demand and for which the depository institution does not reserve the right to require advance notice of an intended withdrawal) owned by a public unit and held by the public unit's official custodian in an insured depository **institution within the State** in which the public unit is located are added together and insured up to \$250,000.

The standard insurance amount is **\$250,000** per depositor, per insured depository institution, for each account ownership category.

Dodd-Frank Wall Street Reform and Consumer Protection Act

For more information about FDIC coverage, go to <https://www.fdic.gov/index.html>

**National Credit Union Administration (NCUA):** NCUA insurance covers members' accounts (savings accounts, share draft accounts, money market accounts and share certificates) in all federally-chartered credit unions and in most state-chartered credit unions. All accounts held by a member will be added together and insured up to the basic insurance amount.

The basic insurance amount is \$250,000 per individual account holder, per federally insured credit union. Dodd-Frank Wall Street Reform and Consumer Protection Act

For more information about NCUA coverage, or an electronic share insurance calculator, go to <http://www.ncua.gov/DataApps/Pages/SI-NCUA.aspx>

## **PLEDGED SECURITIES**

The treasurer or town clerk shall take from the bank, building and loan association, savings and loan association, or credit union security that the local governing body may prescribe, approve, and consider fully sufficient and necessary to ensure the safety and prompt payment of all deposits, together with the interest on any time or savings deposits.

MCA 7-6-201(3)

All deposits must be subject to withdrawal by the treasurer or town clerk in amounts that may be necessary. A deposit of funds may not be made or permitted to remain in any financial institution until the security for the deposit has been first approved by the local governing body and delivered to the treasurer or town clerk.

MCA 7-6-201(4)

**Level of Security:** The local governing body may require security only for that portion of the deposits that is not guaranteed or insured according to law and, as to the unguaranteed or uninsured portion, to the extent of:

- (a) 50% of the deposits if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or
- (b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%.

MCA 7-6-207(1)

**Allowable Securities:** The security must consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

MCA 7-6-207(1)

See MCA 17-6-103 for listing of the types of securities that may be pledged or guarantees may be issued to secure deposits of public funds.

When negotiable securities are furnished, the securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when the receipt is in favor of the treasurer or town clerk and the treasurer's or clerk's successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank.

MCA 7-6-207(2)

**Acceptance & Approval of Securities:** The appropriate governing body shall, upon the acceptance and approval of any of the bonds or securities, make a complete minute entry of the acceptance and approval upon the record of its proceedings, and the bonds and securities must be reapproved at least quarterly.

MCA 7-6-207(2)

**Substitution of deposit security:** Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

MCA 7-6-208(1)

Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the financial institution. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the financial institution.

### **INVESTMENT IN REGISTERED WARRANTS**

If a county has money under its control for which there is no immediate demand, the county may invest it in county, municipal, hospital district, or school district registered warrants. The entities must be located in the same county. The commissioners shall:

- a) designate the fund or funds to be invested;
- b) fix the amount that may be purchased;
- c) establish the rate of interest the county shall receive for the investment; and
- d) designate the warrants that are to be purchased.

MCA 7-6-2701

### **INVESTMENT OF BOND PROCEEDS**

Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings or for other construction may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, when emergency conditions beyond the control of the county commissioners exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. These funds may also be invested in the State Short-Term Investment Pool (STIP).

MCA 7-7-2112

### **INVESTMENT OF SCHOOL DISTRICT MONEYS**

For more detailed information, see SD03– “School Districts – Cash and Investments”

In general, the county treasurer shall be the custodian of all school moneys.

MCA 7-6-2801; MCA 20-9-212

However, State law provides various alternatives for investment of school district moneys by school district trustees, as follows:

- a) May direct the county treasurer to invest any money of the district.  
MCA 20-9-213(4)
- b) May directly invest money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213.  
MCA 20-9-213(4)
- c) May invest money with the State STIP.  
MCA 20-9-213(4)
- d) May invest money in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (MCA 20-9-213(4)). A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements (Title 7, chapter 11) and educational cooperative agreements (Title 20, chapter 9, part 7). A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.  
MCA 20-9-213(4)
- e) May establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds. A district that chooses this option shall enter into a written agreement with the county treasurer. The district may either:
  - (1) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the fund of original deposit as necessary for use by the county treasurer to pay claims against the district; or
  - (2) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:
    - i. the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;
    - ii. the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and
    - iii. the district complies with all accounting system requirements required by the superintendent of public instruction.

MCA 20-9-235(1) to (3)

**Note:** Unless otherwise provided by law, all other revenue may be sent directly to a participating district's investment account.

MCA 20-9-235(5)

**CASH VERIFICATION BY COUNTY CLERK**

The county clerk and recorder, at the close of business each month, shall count the cash in the county treasurer's office and shall retain a copy of the counting.

MCA 7-6-2204

**PETTY CASH FUND**

A county governing body may set aside a sum out of the general fund, which must be known as a petty cash fund. The petty cash fund must be used for the purpose of paying incidental expenses, such as freight charges, express charges, postage, and other similar expenses that must be immediately paid in cash.

MCA 7-6-615(1)

In counties that have a county auditor, the county auditor is responsible for expenditures from the petty cash fund. In counties that do not have a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

MCA 7-6-615(2)

**CASH TRANSFERRED BETWEEN FUNDS**

Money may not be transferred from one fund to another except by resolution of a county governing body unless the transfer is:

1. previously authorized by a budget resolution;
2. to close inactive funds, as provided by MCA 7-6-614;
3. made in the usual course of county business for:
  - a. school transfers;
  - b. tax increment finance districts;
  - c. specialized tax situations;
  - d. the purpose of distributing refunds, protested taxes, or interest charges for interest in lieu of registered warrants;
  - e. bond sinking fund transfers;
  - f. residual equity transfers;
  - g. transfers of investments;
  - h. corrections of errors; or
4. otherwise authorized by statute.

MCA 7-6-613



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**CLAIMS & WARRANTS**

REVISION JANUARY 2022

REF: CO05

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## **CLAIMS APPROVAL PROCESS**

A claim may not be allowed by the board of county commissioners unless the claim is adequately itemized and/or supported by documentation. If the claim is for official services for which specified fees are not fixed by law, the time actually and necessarily devoted to the services must be stated. A claim may not be approved by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

MCA 7-6-2421(1)

**Claim Presented Within 1 Year:** Each claim against the county, except claims arising from injury to a person or property, must be presented within 1 year after the last item accrued.

MCA 7-6-2421(2)

**Listing of Claims Published:** The board of county commissioners must publish in a newspaper at the adjournment of each session of the board, in full and complete detail or in summary form or by reference, with the full and complete text made available on request, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount.

MCA 7-5-2123

## **WARRANTS ISSUED AND PAID**

The county clerk shall draw warrants on the county treasury in favor of all persons entitled to the warrants in payment:

- (a) of all claims and demands chargeable against the county that have been legally examined, allowed, and ordered paid by the board of county commissioners; and
- (b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

MCA 7-6-2202

For these purposes, “warrant” includes a check and an electronic funds transfer.

MCA 7-6-2601(5)

All county warrants issued, except those drawn on the redemption fund, are to be signed by the county clerk and the chairman of the board of county commissioners.

MCA 7-6-2601(1)

All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each warrant, the name of the person to whom it is payable, and the purpose for which it is drawn must be stated on the warrant. Warrants must, at the time they are issued, be registered by the county clerk. The county treasurer shall pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants.

MCA 7-6-2601(2) & MCA 7-6-612(3)(c)



**Electronic Funds Transfer:** All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the county has the technology to conduct electronic funds transfers.

MCA 7-6-2601(4)

## **REGISTERED WARRANTS**

**Warrant Not Paid for Lack of Funds:** If a fund is insufficient to pay a warrant, it must be registered and paid in the order of its registration. All county (and school district) warrants, after having been presented to the county treasurer for payment and endorsed "Not paid for lack of funds in the treasury", after the date of presentation and endorsement, must draw interest at the rate fixed by the board of county commissioners in accordance with law.

MCA 7-6-2603 & 2604

The county treasurer shall register school district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant.

MCA 20-9-212(8)

Warrants drawn on the treasury are entitled to preference as to payment according to the priority of time in which they were presented. The time of presenting the warrants must be noted by the treasurer.

MCA 7-6-2606

When there is sufficient money to pay a registered warrant, the treasurer shall give notice as provided in 7-1-2121 (See CO01-General Topics) that the warrants are able to be paid. Warrants cease to draw interest from the first publication of this notice.

MCA 7-6-2605(1) & (3)

In advertising warrants under the provisions of this section in any newspaper, the treasurer may not publish the warrants in detail but shall give notice only that county warrants presented for payment prior to a date stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer shall designate the payable warrants in the advertisement.

MCA 7-6-2605(2)

If the warrants are not re-presented for payment within 60 days from the time the notice is given, the fund set aside for the payment of the warrants must be applied by the treasurer to the payment of unpaid warrants in order of registry. The board of county commissioners must, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay the warrants out of any money in the treasury that is not otherwise appropriated.

MCA 7-6-2605(4)

When the treasurer pays a warrant on which any interest is due, the treasurer shall note on the warrant the amount of interest paid and enter on the treasurer's account the amount of interest, distinct from the principal.

MCA 7-6-2604(1)

### **CANCELLATION OF WARRANTS**

The board of county commissioners shall cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office. The board shall cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and shall make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the warrant was payable. The board shall cause the list to be entered on the minutes of the board.

MCA 7-6-2607

Although this section requires the warrant to be canceled after one year, it appears the county obligation is not terminated until after 8 years, the time specified by MCA 27-2-202(1) (i.e., statute of limitations for a liability founded upon an instrument in writing.)

AGO #1, Vol. 21

The provisions of the Uniform Unclaimed Property Act are not applicable to property held by a local government entity. Accordingly, cancelled warrants are not considered to be abandoned property for this purpose.

MCA 70-9-802(14)(b)

### **REPLACEMENT OF LOST WARRANT**

The board of county commissioners may issue a duplicate warrant whenever any warrant is lost or destroyed. The duplicate warrant must have the word "duplicate" plainly printed across its face. Except as noted below, no duplicate warrant may be issued unless the person entitled to receive the duplicate deposits with the county treasurer a bond in double the amount for which the duplicate warrant is issued, conditioned to render the county and its officers harmless from all loss, costs, or damages by reason of issuing the duplicate.

MCA 7-7-2104

**Exceptions to Indemnity Bond Requirement:** An indemnity bond is not required to be deposited with the county treasurer:

- a. when the payee is the State of Montana or any agency, instrumentality, or officer of the State;
- b. when the owner or custodian is the State of Montana or any agency or officer of the State;
- c. when the owner or custodian is a bank, savings and loan association, credit union, admitted insurer, or trust company whose financial condition is regulated by the State;

- d. when it can be established that a crime has been committed and that as a result of such crime a county warrant has been stolen or destroyed; or
- e. when it can be established that a county warrant has been mailed to an incorrect payee.
  - i. If the owner or custodian applies under the provisions of (d) or (e), above, a stop-payment order shall be placed on the original warrant by the county treasurer.
  - ii. If the owner or custodian applies under the provisions of (c), (d), or (e), above, the application shall include an agreement to indemnify and hold the county or its officers and employees harmless from any loss resulting from the issuance of a duplicate warrant.

MCA 7-7-2104

## **TRAVEL EXPENSES & MEMBERSHIP DUES**

**Mileage Reimbursement:** All persons entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

MCA 2-18-503

When a privately-owned vehicle is used on county business because a county-owned or leased vehicle is not available or because such use is in the best interest of the county, a mileage rate equal to the mileage allotment allowed by the IRS for the current year must be paid for the first 1,000 miles traveled in a given calendar month. Any miles traveled thereafter within the same month are reimbursed at 3 cents per mile less.

MCA 2-18-503

The standard mileage allotment allowed by the IRS:

- Effective January 1, 2016 – 54 cents per mile
- Effective January 1, 2017 – 53.5 cents per mile
- Effective January 1, 2018 – 54.5 cents per mile
- Effective January 1, 2019 – 58 cents per mile
- Effective January 1, 2020 – 57.5 cents per mile
- Effective January 1, 2021 – 56 cents per mile

If a privately-owned airplane is used in the performance of official duties, reimbursement is allowed for nautical air miles actually traveled at a rate of twice the automobile mileage allotment.

MCA 2-18-503

**Shortest Traveled Route:** Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

MCA 2-18-504

**Travel Policy for Meals & Lodging:** County commissioners may adopt a travel policy providing for the payment/reimbursement of reasonable meal and lodging expenses incurred by county officers or employees in the performance of official duties.

AGO #77, Vol. 40

**Note:** MCA 2-18-501 relates to travel, meals and lodging for state employees/officials and does not, by its own terms, govern meal and lodging expense payments to county officers or employees. A county may, however, adopt a travel policy that reflects the terms of MCA 2-18-501.

**County Commissioners:** A mileage allowance (at the rate allowed in MCA 2-18-503) shall be paid for the distance traveled in going to and returning from the county seat and the commissioner's place of residence, for each day such trip is actually made to perform official duties.

MCA 7-4-2108

A county commissioner whose place of residence is 50 miles or more from the county seat and who elects to remain more than one day in the county seat to perform official duties:

- (a) is entitled to receive, in addition to mileage for one round trip between the commissioner's place of residence and the county seat, the rate for lodging established in Title 2, chapter 18, part 5, or the amount calculated in this section for mileage, whichever is less, as expenses for each day's attendance on sessions of the board. (**Note:** 2-18-501(1) provides that, for travel within the State of Montana, lodging must be authorized at the actual cost of lodging, not exceeding \$35 per day, and taxes on the allowable cost of lodging". Exceptions to this general rate are listed at 2-18-501 also.). All claims for lodging expense reimbursement must be documented by an appropriate receipt.
- (b) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the rate for noncommercial, nonreceiptable lodging established in Title 2, chapter 18, part 5, is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized for commercial lodging. However, when overnight accommodations are provided at the expense of any government entity, reimbursement may not be claimed for lodging.

**Note:** MCA 2-18-501(5) provides that, when other than commercial, nonreceiptable lodging facilities are used, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized for commercial lodging.

All claims against the county presented by members of the board of county commissioners for per diem and mileage or other service rendered by them must be verified as other claims and must state that the service has been actually rendered.

MCA 7-6-2423

County commissioners are authorized to take out county membership in and cooperate with associations and organizations of other counties or county officials of this state and of other

states for the furtherance of good government and the protection of county interests; and to pay for such membership in such associations or organizations with county funds.

MCA 7-5-2141

Any member of the board of county commissioners is allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state, and the proportionate expenses and charges against each county as a member of the association must also be paid.

MCA 7-5-2145(2)

**Other County Officials:** Unless otherwise provided by law, a county officer or employee may not receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at a convention, meeting, or other gathering as the officer or employee may by virtue of the office find it necessary to attend.

MCA 7-5-2145(1)

The following county officials are allowed actual transportation expenses and per diem for attendance at any general meetings of their respective county official associations held within the state, and the proportionate expenses and charges against each county as a member of the association must be paid by the county. **Note:** See above for provisions for county commissioners.

- (a) **Clerk & recorders** - MCA 7-5-2142
- (b) **Clerks of District court** – MCA 7-5-2143
- (c) **Treasurers** – MCA 7-5-2144

**County attorneys, sheriffs, assessors, and justices of the peace** may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses for attending the meeting or convention of their peers.

MCA 7-5-2145(3)

**Note:** Per AGO #124, Vol. 42, "actual traveling expenses" may exceed the levels established in a county travel policy.

**County school superintendents** are entitled to expenses as provided for state officials in 2-18-501 through 2-18-503 for attendance at any general meeting of the Montana association of county school superintendents held within the state, and the proportionate expenses and charges against each county as a member of such an association must be paid by the county.

MCA 7-5-2146

**County Coroner:** When a coroner serves more than one process in the same cause, not requiring more than one journey from the office, the coroner may receive mileage only for the more distant service, and mileage is not allowed for less than 1 mile actually traveled.

MCA 7-4-2923

**County Surveyor of County Commissioner:** The person making the inspections authorized by 7-14-2125 (county surveyor or county commissioner) shall receive a daily salary equal to the equivalent of a daily rate for the salary established in 7-4-2107(2) and actual expenses if the person does not receive other compensation for that day and is not on an annual salary.  
MCA 7-14-2126

Any county officer paid on a per-day basis for performance of official duties is allowed the per-day rate of pay for attendance at any convention, meeting, or other gathering of public officers that the officer may by virtue of the office find it necessary to attend.  
MCA 7-5-2145(4)

### **RESTRICTIONS ON DONATIONS**

No county must ever give or loan its credit in aid of or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to or a shareholder in any company or corporation or a joint owner with any person, company of corporation.  
MCA 7-7-2103

**Note:** AGO Vol. 48, #12 held that a *city* may appropriate funds to a private, non-profit corporation for operation of a private museum, if it is determined that the operation of the museum is for a public purpose and if the city enters into a contract with the corporation guaranteeing the public purpose of the enterprise.

### **FULL DISCLOSURE OF PUBLIC EXPENDITURES ON FEDERAL LOBBYING**

Each quarter of a fiscal year that a local government (i.e., county, a consolidated government, an incorporated city or town, a school district, or a special district), makes an expenditure for the services of a lobbyist to lobby an elected federal official or an appointee of an elected federal official, the local government shall make readily available for public inspection upon request a summary report itemizing each lobbying service provided and how much money was spent for each service.  
MCA 5-7-120(1)

Each local government shall:

- (a) designate an office from which a copy of the report may be obtained; and
- (b) post a copy of the report to the local government's website on the internet, if the local government has a website.

MCA 5-7-120(2)



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**PROCUREMENT, BID LETTING, &  
CONTRACTS**

REVISION JANUARY 2022

REF: CO06

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## **GENERAL BIDDING REQUIREMENTS**

A contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of \$80,000 may not be entered into by a county governing body without first publishing a notice calling for bids. (See exceptions to this bidding requirement, below)

MCA 7-5-2301

**Publication Requirements:** The notice calling for bids must comply with the publication requirements of 7-1-2121. (See CO01-General Topics for discussion of these publication requirements.)

MCA 7-5-2301

Subject to MCA 7-5-2309 (County resident bidding preference - See below), every contract subject to bidding must be let to the lowest responsible bidder. (Exception: “Alternative Project Delivery Contracts” - see below)

MCA 7-5-2301

**Exceptions to Bidding Requirements:** The following are the exceptions to the bidding requirements of MCA 7-5-2301:

1. in lieu of soliciting bids, the governing body may purchase at public auction any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies for an amount less than \$150,000. (MCA 7-5-2303)
2. public printing entered into in accordance with the provisions of Title 18, Chapter 7, Part 4. (MCA 7-5-2304(1)) (See County Advertising and Printing Contracts, below)
3. purchases necessitated by emergencies, as specified in MCA 7-5-2304(2).
4. Effective October 1, 2021: a cooperative purchasing agreement with a state or local government entity. (MCA 7-5-2304(3))
5. repair of bridges and roads damaged by disasters and calamities, provided there is an express determination that the repairs are urgently and immediately needed. (AGO #162, Vol. 37)
6. a county lease contract with no purchase option (AGO #101, Vol. 38)
7. alternative project delivery contracts, as provided in Title 18, chapter 2, part 5 (MCA 7-5-2301) (See discussion below)
8. investment grade energy audits or energy performance contracts pursuant to Title 90, chapter 4, part 11 (See discussion below), or the construction or installation of conservation measures pursuant to the energy performance contract. (MCA 7-5-2315)

## **BIDDING–GAS TAX FUNDS**

See TRA1 Gasoline Tax Apportionment for additional information

If a county contracts for construction, reconstruction, maintenance, or repair of roads costing in excess of the amounts provided in 7-5-2301 (i.e., \$80,000) to be paid with gasoline tax funds, the funds must be disbursed to the lowest responsible bidder according to applicable bidding procedures.



MCA 15-70-101(5)

### **DIVISION OF CONTRACTS PROHIBITED**

Public work or construction projects for which competitive bidding is required may not be divided into several contracts to circumvent the competitive bidding requirements.

MCA 7-5-2305

### **INSTALLMENT PURCHASE CONTRACTS – LENGTH OF TERM**

When the amount to be paid as the purchase price for any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind **exceeds \$4,000**, the county governing body may provide for the payment of the purchase price in installments extending over a period of **not more than 10 years**, provided that at the time of entering into the agreement for the purchase, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of the portion of the purchase price as is payable during the then-current fiscal year and the budget for each following year in which any portion of the purchase price is to be paid contains an appropriation for the purpose of paying the purchase price.

MCA 7-5-2306

### **LEASE/PURCHASE AGREEMENTS SUBJECT TO BIDDING REQUIREMENTS**

Lease/purchase agreements should be treated as contracts for sale and are subject to the statutory bidding requirements: Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and that, after a certain fixed amount has been paid as rental, the property shall become the property of the county or any other similar provisions or conditions shall be deemed and construed to be a contract for sale of such property, and all of the provisions Title 7, Chapter 5, Part 23 shall apply thereto and govern and control the same.

MCA 7-5-2307

The total amount of the lease payments, together with the purchase option price, should be considered when determining whether the agreement is subject to the bidding provisions of MCA 7-5-2301.

AGO #101, Vol. 38

## **COOPERATIVE PURCHASING AGREEMENTS**

Effective October 1, 2021: A county may enter into an agreement for cooperative purchasing as defined in 18-4-401 with the state, a political subdivision of the state or any other state, and any other government entity as defined in 2-11-103. Goods or services procured by participation in a cooperative purchasing agreement or program allowed in this section are considered to have been acquired in accordance with Title 7, Chapter 5, Part 23.

MCA 7-5-2310

## **CONFLICT OF INTEREST**

Members of the board of county commissioners must not be interested, directly or indirectly, in any property purchased for the use of the county, in any purchase or sale of property belonging to the county, or in any contract made by the board.

MCA 7-5-2106

County officers, or any deputies or employees of a county, may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the county involving matters with which the former employee was directly involved during employment.

MCA 2-2-201

As used in MCA 2-2-201(see above):

1. The term "be interested in" does not include a minority interest in a corporation.
2. The term "contract" does not include:
  - a. contracts awarded based on competitive procurement procedures conducted after the date of employment termination;
  - b. merchandise sold to the highest bidder at public auctions;
  - c. investments or deposits in financial institutions that are in the business of loaning or receiving money;
  - d. a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.
3. The term "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract.

The definitions of "be interested in" and "contract" contained in MCA 2-2-201 are incorporated into MCA 7-5-2106.

AGO #28, Vol. 40

A public officer or employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.  
MCA 2-2-131

**Note:** Even though an interest may be permissible under the exceptions listed in MCA 2-2-201 (above), an official who has a substantial interest in the affected business must comply with MCA 2-2-131.

AGO #28, Vol. 40

### **AWARDING PUBLIC CONTRACTS – PREFERENCES**

**County resident bidding preference:** If there are no out-of-state bidders for a contract subject to competitive bid under Title 7, Chapter 5, Part 23, MCA, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than \$500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident. If there are one or more out-of-state bidders for a contract for construction, repair, or maintenance of a building, road, or bridge that is in excess of \$80,000 and that is subject to competitive bid under Title 7, Chapter 5, Part 23, the state resident bid preference provided in MCA 18-1-102, applies (see below).

MCA 7-5-2309

See discussion of prohibitions of the Common Rule related to geographical bid preferences, below.

Public contracts for construction, repair, or public works must be awarded to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country. These preferences apply whether the law requires, or does not require, advertisement for bids, and they apply to contracts involving federal funds unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws.

MCA 18-1-102(1)(a) & (2)

**Note:** Subsection (1)(b), related to public contracts for the purchase of goods, is not applicable to *local governments*. See MCA 7-5-2309(1), above, related to county resident bidding preference.

**Preferences for federally funded contracts:**

**The Common Rule** (2CFR. §200.319(b): The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**Note:** Government-wide guidance for administering grants and cooperative agreements with States and local governments is contained in the OMB Circular A-102 *Common Rule* (a.k.a. *Grants Management Common Rule*), which was codified by each Federal funding agency in its title of the *Code of Federal Regulations*. The *Common Rule* section numbers are referred to without the Federal agency's part number (e.g., §200.319) would refer to the same Procurement/Competition section in all agency regulations. This allows auditors to refer to the same section numbers when discussing administrative issues with different Federal funding agencies.

**Effective Date of Uniform Grant Guidance – December 26, 2014:** Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (“Uniform Grant Guidance”) is codified in the CFR in Title 2, Subtitle A, Chapter II, Part 200. For the procurement standards in §§200.317-200.326, non-Federal entities may continue to comply with the procurement standards in previous OMB guidance (superseded by this part as described in §200.104) for two additional fiscal years after this part goes into effect. If a non-Federal entity chooses to use the previous procurement standards for an additional two fiscal years before adopting the procurement standards in this part, the non-Federal entity must document this decision in their internal procurement policies.

2 CFR §200.110(a)

When the board of county commissioners authorizes a construction or reconstruction project on a county road or wooden bridge project, it shall require the use of Montana-made wooden decking, guardrail posts, fence posts, and signposts when appropriate and when the cost of wooden materials is less than or equal to the cost of other materials.

MCA 7-14-2142; MCA 7-14-2407

**BID SECURITY**

The advertisement, request, or solicitation for bids must specify that all bidders shall expressly covenant in any bid that if the bidder is awarded the contract, the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract. The advertisement or solicitation shall specify the amount of the bond, whether the amount is set by statute or set by the public authority (not less than 10% of the bid price), and shall specify that

a bid bond or other form of security specified in 18-1-203 (see below) constitutes compliance with this requirement.

MCA 18-1-202

**Note:** For a bid for the purchase of indebtedness, the bond may not be less than 2% of the principal amount of the indebtedness.

Bids for public contracts must be accompanied by bid security in the form of cash; cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally or state-chartered bank insured by the federal deposit insurance corporation; or a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in Montana.

MCA 18-1-203

### **CONTRACT PERFORMANCE SECURITY**

**Note:** These contract performance security requirements may be waived for building or construction projects (defined in 18-2-101) that cost less than \$50,000.

MCA 18-2-201(4))

Whenever a county contracts with a person or corporation to do work, the board of commissioners shall require that the person or corporation deliver a good and sufficient bond with a surety company, licensed in the state, conditioned that the person or corporation shall (1) faithfully perform all of the provisions of the contract; (2) pay all laborers, mechanics, subcontractors, and material suppliers; and (3) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material or supplies for performing the work.

MCA 18-2-201

The county may, in lieu of a surety bond, permit the deposit with the county of the following securities in an amount at least equal to the contract sum to guarantee the contract performance: cash; cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft or irrevocable letter of credit drawn and issued by a federally or state-chartered bank or S&L association insured by the FDIC or an insured credit union.

MCA 18-2-201

### **ACCEPTANCE AND FINAL PAYMENT ON CONSTRUCTION CONTRACTS**

A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

MCA 18-2-306

## **RETAINAGE FOR PUBLIC CONTRACTS**

The maximum retainage applied to construction contracts may not exceed 5% if the contractor is performing by the terms of the contract. (Retainage means the ratio, in percent, of funds retained to the total amount to be paid to the contractor by the government entity)

MCA 18-2-316

**Note:** In all public works contracts entered into under the provisions of Title 18, Chapter 2, Part 4, MCA, [i.e., Standard Prevailing Rate of Wages – see below] at least \$1,000 of the contract price must be withheld at all times until the termination of the public works contract.

MCA 18-2-404(2)

## **STATE PREVAILING WAGE RATES (MONTANA’S “LITTLE DAVIS BACON ACT”)**

Current State prevailing wage rates established by the Montana Department of Labor and Industry can be found at <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>

The *State* prevailing wage rates do not apply in those instances in which the standard prevailing rate of wages is determined by *federal* law.

MCA 18-2-402(2)

"Public works contract" is defined as a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000.

MCA 18-2-401(11)(a)

"Construction services" means work performed by an individual in building construction, heavy construction, highway construction, and remodeling work. The term does not include engineering, superintendence, management, office, or clerical work on a public works contract; or consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

MCA 18-2-401(3)

Services that qualify as “nonconstruction services” include a wide range of activities, but do not include management, office, or clerical work.

MCA 18-2-401(9)

A public contracting agency must include in the bid specifications and contracts for any public works the following:

- (a) an unequivocal agreement by the contractor or employer to give preference to employment of bona fide Montana residents

MCA 18-2-403

- (b) a statement that any construction project, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law, the bid specifications and the contract shall provide that at least 50% of the workers of each contractor working on the project will be bona fide Montana residents

MCA 18-2-409

- (c) an unequivocal agreement by the contractor or employer that a worker performing labor on the project will be paid the applicable standard prevailing rate of wages;
- (d) a listing of standard prevailing wage rates including fringe benefits applicable to the public works contract; (MCA 18-2-422) and
- (e) the contract provisions must clearly show that the contractor or employer is bound to pay wages at rates determined by the Department of Labor and Industry, and to give required preferences.

ARM 24.17.144

All public works contracts and the bid specifications for those contracts must contain:

- (1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project; (See also MCA 18-2-403)
- (2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission to the Department of Labor & Industry for not less than 3 years after the contractor's or employer's completion of work on the project; and
- (3) a provision requiring each contractor to post a statement of all wages and fringe benefits.

MCA 18-2-422

**Note:** Failure to include these provisions in a public works contract relieves the contractor from the obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency.

MCA 18-2-403(9); ARM 24.17.144

Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

MCA 18-2-403(6)

All public works contracts under this part must be approved in writing by the legal adviser of the contracting government prior to execution.

MCA 18-2-404(1)

At least \$1,000 of the contract price must be withheld at all times until the termination of the public works contract.

MCA 18-2-404(2)

Any public works contract that calls for more than 30 months to fully perform must include a provision to adjust the standard prevailing rate of wages to be paid. The standard prevailing rate of wages must be adjusted 12 months after the date of the award of the contract, and the amount

of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

MCA 18-2-417

**Note:** Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

When a public works project costing more than \$50,000 is accepted by the public contracting agency, a notice of acceptance and the completion date of the project must be sent to the Department of Labor & Industry. The Department may *request* this information for projects costing less than this amount.

MCA 18-2-421; ARM 24.17.144

### **ALTERNATIVE PROJECT DELIVERY CONTRACTS**

Alternative project delivery contract means a construction management contract, a general contractor construction management contract, or a design-build contract. The term does not include a design-build contract awarded by the transportation commission under 60-2-111(3).  
MCA 18-2-501(1)

A governing body that uses an alternative project delivery contract shall demonstrate that the governing body has or will have knowledgeable staff or consultants who have the capacity to manage an alternative project delivery contract.

MCA 18-2-502(1)

Prior to awarding an alternative project delivery contract, the governing body shall make a determination, in writing, that the proposal meets at least two of the sets of criteria described in (a) through (c) below, and that the proposal meets the provisions of (d).

- a. The project has significant schedule ramifications and using the alternative project delivery contract is necessary to meet critical deadlines by shortening the duration of construction.
- b. By using an alternative project delivery contract, the design process will contribute to significant cost savings.
- c. The project presents significant technical complexities that necessitate the use of an alternative delivery project contract
- d. Using an alternative project delivery contract will not encourage favoritism or bias in awarding the contract or substantially diminish competition for the contract.

MCA 18-2-502(2) & (3)

The governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:

- a. the applicant's history and experience with projects similar to the project under consideration; financial health; staff or workforce that is proposed to be committed to the project; approach to the project; and project costs, and



- b. any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

MCA 18-2-503(2)

At the conclusion of the selection process, the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. The documentation must be provided to all applicants and to anyone else, upon request. The governing body may compensate unsuccessful applicants for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably.

MCA 18-2-503(4) & (5)

### **OPTIONAL ADOPTION OF MONTANA PROCUREMENT ACT**

A county may adopt any or all parts of the Montana Procurement Act (Title 18, Chapter 4, MCA) and the accompanying rules promulgated by the Montana Department of Administration (ARM Chapter 2.5).

MCA 18-4-124

### **STATE COOPERATIVE PURCHASING PROGRAM**

Political subdivisions may purchase supplies and services in cooperation with the State, permitting local public procurement units to take advantage of the cost savings realized by the State's volume purchasing. See overview at <https://spb.mt.gov/Cooperative-Purchasing/Cooperative-Purchasing-Program>; The State Procurement Bureau (SPB) may be contacted at (406) 444-2575 or <https://spb.mt.gov/index>

**Term Contracts** – Local governments may leverage the state's purchasing power by utilizing the State's Term Contracts for commonly used goods and services. Entities purchase directly from the contractor.

**Market Center** – The eMarketCenter online marketplace has been replaced with eMACS. For more information, click here: <https://spb.mt.gov/eMACS-Resources>.

**Vehicle Purchasing** - Local governments may include their vehicle purchases along with the State's order by submitting the proper request forms by the established deadlines. The State will solicit bids from vendors and notify local governments of the results. Visit <https://spb.mt.gov/Cooperative-Purchasing/Vehicle-Purchasing>.

**MDT Commodities** - Local governments may join the Montana Department of Transportation (MDT) in purchasing certain commodities, including road oil, traffic line paint and glass beads, road salt and chemical deicer, snowplow wear blades, rubberized asphalt, preformed thermoplastic pavement markings, and fencing materials. For complete information, contact the MDT at (406) 444-6365.

## **COUNTY ADVERTISING AND PRINTING CONTRACTS**

Effective July 1, 2017, provisions for advertising contracts and printing contracts have been separated into two separate statutes, as detailed below.)

The county commissioners shall contract for all advertising required by law.  
MCA 18-7-411(1)

The advertising required by law must be awarded to a newspaper that:

- a. is published in the county;
- b. has general circulation **Note:** A newsletter or other document produced or published by the local government does not qualify for this criterion;
- c. has been published continuously at least once a week in the county for the 12 months preceding the awarding of the contract; and
- d. prior to July 1 of each year, has submitted to the clerk and recorder a sworn statement that includes:
  - (i) circulation for the prior 12 months;
  - (ii) a statement of net distribution;
  - (iii) itemization of the circulation that is paid and that is free; and
  - (iv) the method of distribution.

MCA 18-7-411(1)

The term of a contract for county legal advertising may not exceed a period of 2 years.  
MCA 18-7-411(3)

The county printing contract must be let to the printing establishment that in the judgment of the county commissioners is the most suitable for performing the work.  
MCA 18-7-412(1)

Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job. The term of a contract for county printing may not exceed a period of 2 years. The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.  
MCA 18-7-412(2) & (3)

The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing, under the terms of this part, or for county legal advertising if there is more than one legally qualified newspaper in the county.  
MCA 18-7-413

Provisions of Title 18, Chapter 7, Part 4 do not apply to any printing or advertising that may be required in connection with the holding of county fairs and expositions.  
MCA 18-7-414

## **ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES**

Governmental agencies, including counties, must publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

MCA 18-8-201

Each government shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the government who can provide further details. A government may comply with this section by:

1. publishing an announcement on each occasion when professional services provided by a licensed professional are required by the government; or
2. announcing generally to the public its projected requirement for any category or type of professional services.

MCA 18-8-203

Procedures for selection: (1) In the procurement of the above professional services, the government may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The government shall evaluate current statements of qualifications and performance data on file with the government, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) The government shall then select, based on criteria established under government procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project. The government procedures and guidelines must be available to the public and include at a minimum the criteria specified in 18-8-204(2)(b) as they relate to each firm.

(3) After conducting an evaluation of firms pursuant to subsections (1) and (2)(b), a local government may enter into a contract with one or more of those firms to provide architectural, engineering, or land surveying services on an as-needed basis for one or more projects and for a term to be mutually agreed to by the parties. Nothing in this subsection prevents a local government from following the procurement procedures in this part for professional services for a particular project, unless a contract made pursuant to this subsection provides otherwise.

MCA 18-8-204

The government shall negotiate a contract with the most qualified firm for the above professional services at a price that the government determines to be fair and reasonable. In making its determination, the government shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature thereof. If the government is unable to negotiate a satisfactory contract with the firm selected at a price the government determines to be fair and reasonable, negotiations with that firm must be formally terminated and

the government shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

MCA 18-8-205

This part need not be complied with by a government when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. This part does not relieve the contracting authority from complying with applicable law limiting emergency expenditures.

MCA 18-8-211

Counties securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed \$50,000 may contract for those professional services by direct negotiation.

MCA 18-8-212

Except as provided in 18-8-204(3), an agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.

MCA 18-8-212

## **LOCAL GOVERNMENT ENERGY PERFORMANCE CONTRACTS**

Energy performance contracts are a means by which local government entities can economically and expeditiously achieve energy and water conservation. "Energy performance contract" means a cost-effective contract between a governmental entity and a qualified energy service provider for implementation of one or more cost-saving measures and guaranteed cost savings.

MCA 90-4-1101 & 1102(4)

The Department of Environmental Quality shall assist governmental entities interested in pursuing energy performance contracts and shall enter into agreements with qualified energy service providers.

MCA 90-4-1110(f) & (c)

Payment obligations pursuant to an energy performance contract aren't general obligations of the local government and are collectible only from conservation-related costs savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract.

MCA 90-4-1109

## **FEDERAL FORM 1099-MISC**

The entity must report on a Federal Information Return, Form 1099-MISC, all payments of \$600 or more which the entity makes during a calendar year to anyone, other than a corporation or tax-exempt organization, who is not an employee. (U.S. Internal Revenue Service Codes)

<https://www.irs.gov/forms-pubs/about-form-1099-misc>

**Note:** The following are some examples of payments to be reported on Form 1099-MISC. For a complete list, contact the IRS:

1. Professional service fees, such as fees to attorneys (including corporations), accountants, architects, contractors, subcontractors, etc.

Payments by attorneys to witnesses or experts in legal adjudication.



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**PAYROLL & EMPLOYEE BENEFITS**

REVISION JANUARY 2022

REF: CO07

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## **HOLIDAY BENEFITS**

The following holiday benefits provisions are not applicable to

- (a) Persons not qualifying as employees: elected officials, schoolteachers, independent contractors, persons hired under personal services contracts, and student interns.  
MCA 2-18-601(7)
- (b) Employees of a county hospital or rest home in counties having a taxable value less than \$30 million, or of a hospital district. For any reduction in leave benefits resulting from this exemption, there must be an increase in compensation or benefits.  
MCA 2-18-641

**Paid Legal Holidays:** Paid holidays must be restricted to the following: New Year's Day, January 1; Martin Luther King Day, the third Monday in January; Lincoln's and Washington's Birthday (President's Day), the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veteran's Day, November 11; Thanksgiving, the fourth Thursday in November; Christmas, December 25; and State general election day.  
MCA 1-1-216, MCA 2-18-601(9)

A public employee may be required to work on a holiday but must be either compensated for the lost holiday or given an opportunity to take a paid day off later.  
AGO #16, Vol. 38

**Collective Bargaining Provision:** County commissioners may enter into a collective bargaining agreement with county employees which grants a day of paid leave in addition to State legal holidays. This collective bargaining provision is merely an additional paid day off and does not constitute a "legal holiday" or an accumulated vacation benefit.  
AGO #116, Vol. 38

**Holiday Falling on Employee's Day Off:** A full-time employee who is scheduled for a day off on a day that is observed as a paid, legal holiday is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday. Part-time employees receive pay for the holiday on a prorated basis. A short-term worker, as defined by MCA 2-18-101, may not receive holiday pay.  
MCA 2-18-603; AGO #16, Vol. 38

The holiday provisions of 2-18-603 apply to full-time, salaried public employees. They do not apply to part-time, temporary, or seasonal employees who are paid on an hourly or per diem basis for work performed.  
AGO #16, Vol. 38

**Four 10-Hour Day Work Week:** County road and bridge department employees regularly working four 10-hour days per week are entitled to eight hours' pay for all nonworked holidays.  
AGO #14, Vol. 43

**Note:** Although this opinion refers to a road and bridge employee, it appears that any county employee regularly working four 10-hour days per week would also be entitled to eight hours of pay for all nonworked holidays.

**Four 10-Hour Day work Week - Collective Bargaining for County Employees:** A county may collectively bargain that public employees who work 10-hour days for 4 days per week are to be paid for 10 hours on holidays that fall on their regularly scheduled workday.  
AGO #4, Vol. 53

## **ANNUAL VACATION LEAVE**

The following vacation leave benefits provisions are not applicable to:

- (a) Persons not qualifying as employees: elected officials, schoolteachers, independent contractors, persons hired under personal services contracts, and student interns.  
MCA 2-18-601(7)
- (b) Employees of a county hospital or rest home in counties having a taxable value less than \$30 million, or of a hospital district. For any reduction in leave benefits resulting from this exemption, there must be an increase in compensation or benefits.  
MCA 2-18-641

Permanent full-time employees earn annual vacation leave credits from the first day of employment, but are not entitled to any vacation leave with pay until they have been continuously employed for 6 calendar months.  
MCA 2-18-611(1)

Seasonal employees earn vacation credits, but must be employed for 6 qualifying months before they may use the vacation credits. To qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.  
MCA 2-18-611(2)

Permanent part-time employees receive prorated annual vacation leave credits if they have worked for the qualifying period.  
MCA 2-18-611(3)

An employee may not accrue annual vacation leave credits while in a leave-without-pay status.  
MCA 2-18-611(4)

Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.  
MCA 2-18-611(5)

Short-term workers or student interns may not earn vacation leave credits and time worked as either does not apply toward the person's rate of earning vacation leave credits.  
MCA 2-18-611(6)



**Rate Earned:** Vacation leave credits are earned at a yearly rate as follows:

- (a) less than 10 years of service - 15 working days per year
- (b) 10 through 15 years of service - 18 working days per year
- (c) 15 through 20 years of service - 21 working days per year
- (d) 20 years or more of service - 24 working days per year

This schedule applies to the total years of an employee's employment, whether the employment is continuous or not. An employee must be credited with 1 year of employment for each period of:

- (a) 2,080 hours of service following the date of employment. An employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period.
- (b) 12 calendar months in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any 1 month.

MCA 2-18-612

**Military leave:** A period of absence from employment occurring during a war or other national emergency, and for 90 days thereafter, for active duty with the US armed forces is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits.

MCA 2-18-614

**Maximum Vacation Leave Accumulation:** Annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

MCA 2-18-617(1)(a)

If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited and the county denies the request, the excess vacation leave is not forfeited and the county shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited.

MCA 2-18-617(1)(b)

**Termination of Employment:** An employee who terminates employment for a reason not reflecting discredit on the employee and who has worked the 6-month qualifying period is entitled upon the date of termination to either:

- (a) cash compensation for unused vacation leave, or
- (b) conversion of the employee's unused vacation leave balance to an employer contribution to an employee welfare benefit plan health care expense trust account; i.e., voluntary employees' beneficiary association (VEBA)

MCA 2-18-617(2)

Employees are not allowed to receive pay in lieu of vacation days not used, except upon termination.

MCA 2-18-617(2); AGO #25, Vol. 46

A county employee who is elected or appointed to public office thereby terminates his employment and is entitled to receive vacation and sick leave benefits that accumulated during the course of the employee's employment with the county.

AGO #12, Vol. 38

**Contribution of Accumulated Vacation Leave to Sick Leave Fund:** A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave. An employee may contribute accumulated vacation leave to this sick leave fund, but the contributions are nonrefundable and are not eligible for cash compensation upon termination.

MCA 2-18-618(10), 617(2)(b) & (4)

If an employee has earned vacation leave but dies from an accident while on the job, the accumulated vacation leave available for cash compensation under subsection (2)(a)(i) must be paid out as a death benefit to the employee's beneficiary or estate. This benefit is in addition to workers' compensation benefits, if those are applicable.

MCA 2-18-617(2)(c)

For the purpose of this part, the following definitions apply: (a) "Accident" means an unexpected traumatic incident or unusual strain that is identifiable by time and place of occurrence and caused by a specific event on a single day or during a single work shift. (b) The term does not include an employee's suicide.

MCA 2-18-601(1)

## **SICK LEAVE**

The following sick leave benefits provisions are not applicable to:

- (a) Persons not qualifying as "employees" - elected officials, schoolteachers, independent contractors, persons hired under personal services contracts, and student interns.

MCA 2-18-601(7)

- (b) Employees of a county hospital or rest home in counties having a taxable value of less than \$30 million, or of a hospital district. For any reduction in leave benefits resulting from this exemption, there must be an increase in compensation or benefits.

MCA 2-18-641

A permanent full-time employee earns sick leave credits from the first day of employment, but is not entitled to be paid sick leave until continuously employed for 90 days.

MCA 2-18-618(1)

An employee may not accrue sick leave credits while in a leave- without-pay status.

MCA 2-18-618(2)

Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying 90-day period.

MCA 2-18-618(3)

Full-time temporary and seasonal employees are entitled to sick leave benefits provided they have worked the qualifying 90-day period.

MCA 2-18-618(4)

Short-term workers, as defined by MCA 2-18-101, may not earn sick leave credits.

MCA 2-18-618(5)

**Rate Earned:** Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year.

MCA 2-18-618(1)

**Termination of Employment:** Except for VEBA contributions, an employee who terminates employment is entitled to a lump-sum payment equal to one-fourth of accumulated sick leave, computed on the basis of the salary or wage at the time the employee terminates employment.

MCA 2-18-618(6)(a)

An employee may not be paid upon termination for any remaining sick leave credits that were accrued prior to July 1, 1971. However, an employee does not forfeit sick leave benefits accrued prior to that date.

MCA 2-18-618(6)(a)

For an employee who dies from an accident while on the job, any sick leave benefits must be paid out as a death benefit at 100% of the accumulated value of the sick leave to the employee's beneficiary or estate.

MCA 2-18-618(c)

A county employee who is elected or appointed to public office thereby terminates his employment and is entitled to receive vacation and sick leave benefits that accumulated during the employee's employment with the county.

AGO #12, Vol. 38

**Contribution of Accumulated Sick Leave to Sick Leave Fund:** A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave.

MCA 2-18-618(10)

## **JURY/WITNESS DUTY AND MILITARY LEAVE**

A county employee who serves on jury duty or serves as a witness has the following two options:

- (a) The employee shall collect all fees and allowances payable because of the service and forward the fees to the county accounting office. Juror and witness fees must be applied against amounts due the employee from the county.
- (b) The employee may elect to use annual leave to serve on a jury or as a witness. In this case, he is not required to remit his juror or witness fees to the county.

In either case, the employee is not required to remit to the county any expense or mileage allowance paid by the court.

MCA 2-18-619

A county employee who is a member of the national guard of Montana or any other state or of the reserve corps or military forces of the United States, and who has been an employee for a period of at least 6 months, must be given leave of absence with pay Deleted effective April 29, 2021: accruing at a rate of 120 hours in a calendar year for performing military service. Effective April 29, 2021: The full 120 hours of leave must be credited in full to an employee after 6 months of employment and in each successive calendar year. Military leave may not be charged against the employee's annual vacation time. Unused military leave must be carried over to the next calendar year but may not exceed a total of 240 hours in any calendar year.

MCA 10-1-1009

## **RETIREMENT – PUBLIC EMPLOYEES’ RETIREMENT SYSTEM (PERS)**

**Contracting Employers:** Any municipal corporation, county, or public agency in the state may become a contracting employer through a contract entered into between the board and the legislative body of the contracting employer. The contract must provide that all employees eligible under this chapter must become members. Contracts executed prior to July 1, 2009, that limit membership to a specific group or groups of employees, remain valid.

MCA 19-3-201(1)

**Approval of Contract:** The governing body shall adopt a resolution of intention to approve the contract, and may approve the contract only after a majority affirmative vote of the employees, and affirmative vote of two-thirds of the governing body. If approved, the provisions of the retirement system will apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis.

MCA 19-3-201(2)

**Request by individual employee:** Any employee who has, for a continuous period of at least 2 years, been an employee of a municipal corporation, county, or other public agency that is not a contracting employer may advise the governing body, in writing, that the employee wishes to participate in the retirement system. Within 30 days after receipt of the written request, the governing body shall adopt the resolution of intention and take action as provided for in 19-3-201.

MCA 19-3-202

To see a Schedule of Participating Employers by Fiscal Year for all of the retirement systems (other than TRS), go to <https://mpera.mt.gov/about/annualreports1/annualreports>. In Annual Comprehensive Financial Reports, select the fiscal year. In the report, scroll down to the “Statistical Section”. The “Schedule of Participating Employers” is near the end of the Statistical Section.

**Termination of Contract:** Provisions for termination of a contract are similar to those for approval of a contract.  
MCA 19-3-201(3)

**Membership:** Except as discussed below, all employees of a local government participating in PERS (i.e., contracting employer) shall become members of the defined benefit plan on the first day of service.  
MCA 19-3-401(1)

**Note:** An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

**Exclusions from Membership:** The following persons may not become members of the retirement system and may not later purchase previous service under 19-3-505:

- (1) inmates or residents of state institutions or correctional institutions;
- (2) persons in state institutions principally for the purpose of training but who receive compensation;
- (3) independent contractors;
- (4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:
  - (a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.
  - (b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

- (5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);
- (6) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;
- (7) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505.
- (8) county school superintendents who are required by 19-20-302(1)(g) and (2) to be members of the teachers' retirement system provided for in Title 19, chapter 20.

MCA 19-3-403

**Optional membership -- employees not in elected office.**

- (1) Except as provided in subsection (2), the following employees in covered positions that are not elected offices shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):
  - (a) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;
  - (b) employees directly appointed by the governor;
  - (c) employees working 10 months or less for the legislative branch to perform work related to the legislative session;
  - (d) the chief administrative officer of any city or county; and
  - (e) employees of county hospitals or rest homes.
- (2) (a) An employee who is an active or inactive member at the time of employment is not eligible to make an election under subsection (1). Upon employment in the position, an employee who was an active member remains an active member for all covered employment and an employee who was an inactive member shall become an active member.
  - a. (b) A person who was a retired member before employment in a position for which membership is optional under subsection (1) is not eligible to make an election under subsection (1) and is subject to the provisions of Title 19, chapter 3, part 11.
- (3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.
  - b. (b) Each employee in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.
  - c. (c) The written application must be filed with the board within 90 days after the commencement of the employee's employment.

- d. (d) The employer shall retain a copy of the employee's written application.
- (4) If the employee fails to file with the board the written application required under subsection (1) within the time allowed in subsection (3), the failure must be considered an election to decline membership.
- (5) Except as provided in subsection (6), an employee who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.
- (6) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.
- (7) An employee who has made an election under this section may not make a new or different election under this section in any circumstance unless the employee has been terminated from employment in all optional membership positions for at least 30 days.
- (8) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership under this section.

MCA 19-3-412

### **RETIREMENT – SHERIFFS’ RETIREMENT SYSTEM (SRS)**

**Membership:** Each sheriff, investigator & detention officer shall become a member of the sheriffs' retirement system (SRS), except that if these individuals were members of PERS on the following specified dates, they may remain PERS members or elect to become members of SRS by filing a written election with the board at any time before retirement:

- (a) A sheriff - on July 1, 1974;
- (b) An investigator - on July 1, 1993;
- (c) A detention officer – on July 1, 2005 (written declaration must be filed before May 1, 2006)
- (d) A member of PERS who begins employment in a position covered by SRS may file a written election no later than 90 days after beginning the employment.
- (e) Failure to make an election is considered an election to remain in the PERS

MCA 19-7-301

### **RETIREMENT – TEACHERS’ RETIREMENT SYSTEM (TRS)**

**Membership:** The following employees must be active members of TRS:

- (a) a person who is a teacher, principal, or district superintendent;
- (b) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;
- (c) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, or a school district;

- (d) a person elected to the office of county superintendent of schools. **Note:** A retired member elected or appointed to the office of county superintendent of schools is not eligible for optional membership in PERS and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the TRS.
- (e) In order to be eligible for active membership, the persons described above must be employed for at least 30 days in any fiscal year; and have the compensation for the person's creditable service totally paid by an employer.

MCA 19-20-302(1) to (3)



<b><u>CONTRIBUTIONS TO RETIREMENT SYSTEMS - ALL SYSTEMS</u></b>			
<b>EFFECTIVE DATE</b>	<b>EMPLOYEE CONTRIBUTION**</b>	<b>EMPLOYER (COUNTY) CONTRIBUTION</b>	<b>STATE CONTRIBUTION</b>
<b>PERS</b>			
	MCA 19-3-315	MCA 19-3-316 & 319	MCA 19-3-319
7/1/13	All members - 7.9%*	FY2014: 6.8% +1.27%* add'l contrib.= <b>8.07%</b> ; Additional contribution increases by 0.1% each fiscal year through FY2024.	.10%
	*On January 1 following an actuarial valuation, the employee contribution rate will be reduced to 6.9%, and the <i>additional</i> contributions of employer & State will terminate, if the actuarial valuation determines that these terminations and reductions would not cause the amortization period to exceed 25 years.		
	Retired members who return to active service are subject to the above employee, employer, and state contributions. For retired members who return to work in a covered position but who have <i>not</i> become active members, the employer and state shall contribute the amounts specified in 19-3-316 & 319. (MCA 19-3-1113)		
7/1/17	7.9%	8.47% Additional employer contribution rate increases 0.1% every year through FY2024	.10%
<b>SRS</b>			
	MCA 19-7-403	MCA 19-7-404	N/A
7/1/09	9.245%	10.115%	N/A
7/1/17	10.495%	13.115%	N/A
<b>FURS</b> – May apply only to consolidated city/county governments – See CT07			
	MCA 19-13-601	MCA 19-13-605	MCA 19-13-604
7/1/97	9.5% w/o GABA 10.7% w/GABA Also – 1% withheld & paid to Montana State Firemen’s Association	14.36%	32.61%
<b>MPORS</b> – May apply only to consolidated city/county governments – See CT07			

	MCA 19-9-710	MCA 19-9-703	MCA 19-9-702
7/1/13	If first employed: after 6/30/75 but before 7/1/79 – 7% after 6/30/79 - 8.5% on & after 7/1/97 - 9% w/ GABA - 9%	14.41%	29.37%
<b>TRS (for County Superintendent of Schools)</b>			
	MCA 19-20-602 & 608	MCA 19-20-605 & 609	MCA 19-20-604 & 607
7/1/13	Tier 1 member*: 7.15% + 1% supplemental = <b>8.15%</b> Tier 2 member*: <b>8.15%</b>	FY2014: 7.47% + 1% supplemental = <b>8.47%</b> ; Supplemental contrib. increases by 0.1% each fiscal year through FY2024; For each retired member who returns to covered employment: <b>9.85%</b> + supplemental contribution above.	.11% + 2.38% supplemental = 2.49%
7/1/17	Tier 1 member*: 7.15% + 1% supplemental = <b>8.15%</b> Tier 2 member*: <b>8.15%</b>	FY2018: 8.770% + 1% supplemental = 8.870%	.11% + 2.38% supplemental = 2.49%
	<p>*A “tier one member” is a person who became a member before 7/1/13 and who has not withdrawn his/her account balance. A “tier two member” is a person who became a member on or after 7/1/13 or who, after withdrawing his/her account balance, became a member again after 7/1/2013.</p> <p><b>Effective 7/1/13:</b> The Tier 1 member supplement contribution may be decreased, and a Tier 2 member may be required to contribute a supplemental contribution, under circumstances described in MCA 19-20-608. Also, the employer supplemental contribution may be decreased under circumstances described in MCA 19-20-609.</p>		
<p><b>NOTES:</b></p> <p>Contributions are expressed as a percentage of the employee’s gross pay</p> <p>**Employee contribution must be payable from the same source as is used to pay the compensation.</p> <p>“GABA” refers to “guaranteed annual benefit adjustment”</p>			

**RETIREMENT SYSTEMS “COMPENSATION” DEFINED**

Applicable to PERS, SRS, MPORS, and FURS

For purposes of retirement systems, "compensation" means remuneration paid ... before any pretax deductions allowed by state or federal law are made.

MCA 19-3-108(1) (PERS), MCA 19-7-101(1) (SRS), MCA 19-9-104(1) (MPORS), MCA 19-13-104(2) (FURS)

The above statutes list items that are not included in compensation. They indicate that bonuses that are one-time, temporary payments in addition to and not considered part of base pay are not considered compensation.

Also, compensation does not include contributions to group insurance, such as that provided under 2-18-701 through 2-18-704.

MCA 19-3-108(1)

Pre-tax deductions, including elective contributions under an IRC section 125 (Section 125) cafeteria plan, may be considered compensation for purposes of these retirement systems, but only if the following conditions are met:

- (a) If an employer increases a member's compensation to account for health, dental, vision, life or disability costs, the amount of the increase can be included in compensation for retirement system purposes only if the employer includes that amount, to the extent required by applicable federal and state law, in its calculation of the member's compensation for all purposes, including but not limited to federal and state income taxes, FICA, unemployment insurance, overtime, shift differentials, workers' compensation, and benefits based on compensation, such as life or disability benefits based on a multiple or percentage of annual pay.
- (b) The cafeteria plan must be a bona fide cafeteria plan that is operated in compliance with requirements of Section 125. See details at [https://mpera.mt.gov/\\_docs/BoardPolicies/BdPolicyAdmin05.pdf](https://mpera.mt.gov/_docs/BoardPolicies/BdPolicyAdmin05.pdf)

## **SALARY SCHEDULE FOR COUNTY OFFICIALS**

The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sheriff, county surveyor (if a salaried position), justice of the peace, county coroner, and county auditor must be established by the county governing body based upon the recommendations of the County Compensation Board provided for in 7-4-2503(4).

MCA 7-4-2503(1)(a)

Except as noted below, the annual salary established by the county governing body, based upon the recommendations of the Compensation Board must be uniform for all county officers listed above.

MCA 7-4-2503(1)(b)

Treasurer, clerk of district court, and justice of peace - The county treasurer, clerk of district court, and justice of peace may receive, in addition to the base salary set forth in the annual salary schedule, up to \$2,000 a year. This additional salary may not be included as salary for the

purposes of computing the compensation of any other county officers or employees. The justice of the peace for a justice's court of record may receive, in addition to the base salary provided in subsection (1)(a), compensation up to an amount allowed by 3-10-207.

MCA 7-4-2503(2)(e)

Clerk and Recorder - If the clerk and recorder is also the county election administrator, the clerk and recorder may receive, in addition to the base salary set forth in the annual salary schedule, up to \$2,000 a year. The additional salary provided may not be included as salary for the purposes of computing the compensation of any other county officers or employees.

MCA 7-4-2503(2)(d)

Superintendent of Schools – An elected county superintendent of schools must receive, in addition to the salary set forth in the annual salary schedule, the sum of \$400 a year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary set forth in the annual salary schedule, up to \$2,000 a year.

MCA 7-4-2503(2)(a)

Sheriff - The county sheriff must receive, in addition to the salary set forth in the annual salary schedule, the sum of \$2,000 a year. In addition, the sheriff must receive a longevity payment amounting to 1% of the salary set forth in the annual salary schedule for each year of service with the sheriff's department. Years of service during any year in which the salary was set at the level of salary of the prior fiscal year may not be included in any calculation of longevity increases.

MCA 7-4-2503(2)(b) & (c)

**Note:** This additional salary amount may not be included in the salary for purposes of computing compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

Coroner - The county coroner may be a part-time position, and the salary may be set accordingly.

MCA 7-4-2503(2)(f)

Surveyor - The board of county commissioners may assign responsibility for the supervision and direction of all highways, bridges, and causeways within the county to a county surveyor or to a county road superintendent, or may allocate the duties between the surveyor and the superintendent. The surveyor must receive the annual salary provided by law for salaried county surveyors and other county officials.

MCA 7-4-2812

**Note:** If the county commissioners do not assign this responsibility to the surveyor, the surveyor may instead receive fees for compensation.

Justice of the Peace - The board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers. The salary of the justice of the peace may not be less than the salary for the district clerk of court in that county.

However, if the court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

MCA 3-10-207

**Note:** If the county establishes the justice court as a court of record, then the salary of the justice of the peace may not exceed 90% of the salary of a district court judge as determined in MCA 3-5-211.

MCA 3-10-101, MCA 3-10-207

**County Compensation Board:** The Compensation Board shall hold hearings annually for the purpose of reviewing the compensation paid to county officers, and shall prepare a compensation schedule for the elected county officials, including the county attorney\*\*, for the succeeding fiscal year. A recommended compensation schedule requires a majority vote of the Compensation Board, and at least two county commissioners must be included in the majority. A recommended compensation schedule may not reduce the salary of a county officer that was in effect on May 1, 2001. The provisions of this subsection (4) do not apply to a county that has adopted a charter form of government or to a charter, consolidated city-county government.

MCA 7-4-2503(4)

**\*\*Note:** See below, for discussion of the county attorney's salary.

**Salary Resolution:** By the date established in 7-6-4036 this date is "the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values", the county governing body shall by resolution adjust and uniformly fix the salaries of the county officers listed above, by adding to the annual salary provided for in 7-4-2503(1) a cost-of-living increment based upon the schedule developed and approved by the county compensation board provided for in 7-4-2503(4).

MCA 7-4-2504

## **SALARIES – COUNTY COMMISSIONERS**

This section does not apply to counties that have adopted a charter form of government.

MCA 7-4-2107(3)

**Annual Salary:** Each member of the board of county commissioners shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus \$2,000.

MCA 7-4-2107(1)

**Part-Time Board:** Each board of commissioners may elect to serve on a part-time rather than a full-time basis and receive part-time annual salaries based on the annual salary established at 7-4-2503 for the clerk and recorder.

MCA 7-4-2107(2)

## **SALARY – COUNTY ATTORNEY**

**State’s Share:** The funding for the salary and health insurance benefits for the county attorney is a shared responsibility of the state and the county. The state Department of Justice shall pay its share on a quarterly basis as follows:

1. For each county and consolidated government with a full-time county attorney, the amount paid each fiscal year must be equal to 50% of 85% of a district court judge's salary most recently set under 3-5-211 plus an amount equal to 50% of the employer contribution for group benefits under 2-18-703(2).
2. For each county and consolidated government with a part-time county attorney, the total amount paid each fiscal year must be equal to the amount calculated for a full-time position, prorated according to the position's regular work hours.

MCA 7-4-2502

The salary for the county attorney shall be included in the compensation schedule for elected county officials prepared by the county compensation board. If the base salary set for county officials in the annual salary schedule is increased, the county attorney is entitled to at least the same increase unless the increase would cause the county attorney's salary to exceed the salary of a district court judge.

MCA 7-4-2503(3)(b) & (4)(c)

## **COMPENSATION FOR OTHER COUNTY OFFICIALS**

The board of county commissioners may fix the compensation of all county officers not otherwise fixed by law, and may, in conjunction with setting salaries for other officers as provided in MCA 7-4-2504, set their salaries at the prior fiscal year level.

MCA 7-4-2502(5)

**County Surveyor and Public Administrator:** The county surveyor (if not receiving a salary under 7-4-2812) and the public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed by law. All other county officers receive salaries.

MCA 7-4-2501

See CO14 – County Offices/Boards for discussion of fees collected by various officials.

**Compensation for Road Inspections:** The board of county commissioners may direct the county surveyor or some member(s) of the board to inspect the condition of any road. The person making these inspections shall receive a daily salary equal to the equivalent of a daily rate for the salary established in 7-4-2107(2) and actual expenses, if the person does not receive other compensation for that day and is not on an annual salary.

MCA 7-14-2125 & 2126

**Consolidated Offices:** When two or more county offices are consolidated under a single officer, the officer must receive a salary determined by the board of county commissioners. The salary, however, may not be more than 20% higher than the highest salary provided by law to be paid to

any officer whose duties the officer is required to perform by reason of the consolidations. The board shall, in conjunction with setting elected officials' salaries as provided in 7-4-2503, adopt a resolution fixing the percentage adjustment of the salary of the officer holding the consolidated office for the term beginning January 1 immediately following the adoption of the resolution. The board shall adopt the resolution for the subsequent term of the consolidated office prior to the first day of candidate filing for that term.

MCA 7-4-2312

## **SALARIES OF DEPUTIES & ASSISTANTS**

The board of county commissioners shall fix the compensation allowed any deputy or assistant of the following officers: (a) clerk and recorder; (b) clerk of the district court; (c) treasurer; (d) county attorney; and (e) auditor. The salary of these deputies or assistants, other than a deputy county attorney, may not be more than 90% of the salary of the officer under whom the deputy or assistant is serving.

MCA 7-4-2505(1) & (2)

**Assistants to County Commissioners:** The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons.

MCA 7-5-2107

**Note:** The salaries of administrative assistants employed by a board of county commissioners are not limited by 7-4-2505 (above). Salaries of the administrative assistants may be set pursuant to 7-5-2107 which contains no limitation as to amount.

AGO #43, Vol. 38

**Deputies/Assistants to County School Superintendent:** The commissioners shall fix the salaries of deputies and assistants for the county superintendent of schools at 90% or less of the salary of the county superintendent.

MCA 20-3-203

**Deputy County Attorney:** The salary of the deputy county attorney, including longevity payments provided in 7-4-2503(3)(c) (see below), may not exceed the salary of the county attorney under whom the deputy is serving.

MCA 7-4-2505(2)

After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of additional service up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual longevity salary increase of \$500 or a greater amount based on

the schedule developed and recommended by the county compensation board as provided in subsection (4). Any additional annual longevity salary increase provided for in this section after the 11th year of service may not exceed the amount provided in the schedule developed and recommended by the county compensation board.

The years of service accumulated after the 11th year of service as a deputy county attorney prior to July 1, 2015, may not be included in the calculation of the longevity increases by the county compensation board under this section.

MCA 7-4-2503(3)(c)

**Undersheriff:** The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff.

MCA 7-4-2508

The term "compensation" used in MCA 7-4-2508 (above & below) means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.

**Deputy Sheriff:** The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:	
Below 15,000	85% to 90%
15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

The sheriff shall adjust the compensation of the deputy sheriff within the ranges noted above, according to a rank structure in the office.

MCA 7-4-2508

**Longevity Payments:** Beginning on the date of the deputy sheriff's or undersheriff's first anniversary of employment with the office and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the office, but years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in the calculation of longevity increases. This payment shall be made in equal monthly installments.

MCA 7-4-2510

**Note:** As used here, year of service means calendar year, not 2,080 hours of work.

AGO#19, Volume 48

Minimum base annual salary as used here is based on the sheriff's base salary as set forth in 7-4-2508.

AGO #44, Volume 43



**Disability Pay – Deputy Sheriff:** A deputy sheriff who is injured in the performance of his/her duties and who requires treatment for injuries that render him/her unable to perform the deputy sheriff's duties must be paid by the county the difference between the deputy sheriff's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

MCA 7-32-2113

Whenever, in the opinion of the county and supported by a health care provider's opinion, the deputy sheriff is able to perform specified types of light duty, payment of the officer's partial salary amount under 7-32-2113 must be discontinued if the deputy sheriff refuses to perform light duty when it is available and offered to the deputy sheriff. For this purpose, the deputy sheriff may be transferred to another department or agency within the county.

MCA 7-32-2114

When a member of the Sheriff's Retirement System (SRS) receives compensation from both the member's employer and the workers' compensation program, the member's compensation reported to the SRS by the employer is the same as if the member was in active service, and the member and employer contributions for the SRS must be calculated and paid on that total compensation.

MCA 19-7-410

## **OVERTIME**

**General Rule:** Generally, an employer may not employ any employee for a workweek longer than 40 hours unless the employee receives compensation for employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which the employee is employed.

MCA 39-3-405

This provision generally agrees to the overtime provisions of the **Federal Fair Labor Standards Act (FLSA)**, which covers virtually all local government employees.

29 CFR §553.3

Elected officials and their appointees are exempt from the FLSA.

29 CFR §553.10 & .11

There are also partial exemptions from overtime requirements of the FLSA for fire protection, law enforcement, and hospital employees (see discussions below)

29 CFR §553.32(b)

Currently under federal injunction, the DOL amended the FLSA by increasing the salary threshold from \$455 a week (\$23,660 for a full-year worker) to \$913 a week (\$47,476 for a full-year worker). Under this final rule, most employees not passing the duties test (bona fide executive, administrative, or professional (EAP) employees) who also make less than \$47,476 a

year will be entitled to overtime pay or comp time. The other exemptions noted above also apply. Click here for more information: <https://www.federalregister.gov/documents/2016/05/23/2016-11754/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and> or here for application to local governments: <https://www.dol.gov/agencies/whd/flsa>

**Exclusions from General Overtime Provisions:** The overtime provisions of MCA 39-3-405 do not apply to the following:

An individual employed in a bona fide executive, administrative, or professional capacity, a computer systems analyst, computer programmer, software engineer, network administrator or other similarly skilled computer employee who earns not less than \$27.63 an hour.  
MCA 39-3-406(1)(j)

An employee of a sheriff's office or of a department of public safety who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1) or 7-32-115 (see below)  
MCA 39-3-406(2)(n) & (s)

- (a) A sheriff's office or department of public safety may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111, for determining when an employee may be paid overtime.  
MCA 7-4-2509, MCA 7-32-115
- (b) Any person employed as a deputy sheriff of a county having taxable value of \$30 million or more may not be required to work in excess of 40 hours per week except in case of an emergency and is entitled to 2 days off in each 7-day period.  
MCA 7-32-2111
- (c) The aggregate of all work periods in a year may not exceed 2,080 hours.  
MCA 7-4-2509, MCA 7-32-115
- (d) The board of county commissioners may by resolution establish that any undersheriff, deputy sheriff, or public safety department employee who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.  
MCA 7-4-2509, MCA 7-32-115
- (e) However, the FLSA requires that law enforcement employees must be paid overtime for work in excess of 171 hours in a 28-day work period. In the case of such employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 171 hours to 28 days (i.e.,  $171 \text{ hours} \div 28 \text{ days} = 6.1$ ).  
29 CFR §553.201
- (f) A county employee engaged in law enforcement activities, if the county employs less than five employees in law enforcement activities, is completely exempt from the overtime provisions of the FLSA.  
29 CFR §553.200
- (g) "employee in law enforcement activities" is defined in detail in 29 CFR §553.211

A county employee who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ time the hourly wage rate.  
MCA 39-3-406(2)(o)

An employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or disordered who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.  
MCA 39-3-406(2)(p)

A firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.  
MCA 39-3-406(2)(q)

- (a) However, the FLSA requires that fire protection employees must be paid overtime for work in excess of 212 hours in a 28-day work period. In the case of such employees who have work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 hours to 28 days (i.e.,  $212 \text{ hours} \div 28 \text{ days} = 7.6$ ).  
29 CFR §553.201
- (b) A county employee engaged in fire protection activities, if the county employs less than five employees in fire protection activities, is completely exempt from the overtime provisions of the FLSA.  
29 CFR §553.200
- (c) “employee in fire protection activities” is defined in detail in 29 CFR §553.210

A county employee employed, at the employee’s option, on an occasional or sporadic basis in a capacity other than the employee’s regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation.  
MCA 39-3-406(2)(x)

**Compensatory Time in Lieu of Overtime:** Local government employees who are covered by the FLSA may reach agreement with their employers to receive compensatory time in lieu of cash overtime. Compensatory time in lieu of cash must be at the rate of not less than 1 ½ hours of compensatory time for each hour of overtime worked.  
29 CFR §553.20; AGO #58, Vol. 41

**Note:** State and federal law do not require the local government to make the accrual or use of compensatory time available to “exempt” employees (i.e., individuals employed in a bona fide executive, administrative, or professional capacity, as discussed above). However, the local government may establish a policy of permitting compensatory time to be earned by “exempt employees” on an “hour-for-hour” basis for time in a pay status in excess of 40 hours in a workweek. Accrued time may be taken as approved time off at a later date.

- (a) As a condition for use of compensatory time in lieu of overtime payment in cash, an agreement or understanding must be reached prior to the performance of work. A copy of this agreement or understanding should be kept on file, or if not in writing, a record of its existence should be kept.  
29 CFR §553.23(a) & .50
- (b) Generally, no more than 240 hours of compensatory time may be accrued. This 240-hour limit is based on 160 hours actual overtime worked. Any additional overtime hours worked over this limit must be paid in cash overtime.  
29 CFR §553.21 & .22
- (c) However, for those employees engaged in public safety activities (i.e., law enforcement and firefighting), emergency response activities or seasonal activities, no more than 480 hours of compensatory time may be accrued. The 480-hour limit is based on 320 hours actual overtime worked. Any additional overtime hours worked over this limit must be paid in cash overtime.  
29 CFR §553.22 & .24
- (d) Any employee who has accrued compensatory time and requested use of it must be permitted to use such time off within a reasonable period after making the request, if such use does not unduly disrupt county operations. An employee must not be coerced to accept more compensatory time than an employer can realistically expect to be able to grant.  
29 CFR §553.25
- (e) Upon termination of employment, an employee must be paid for unused compensatory time at a rate not less than the average regular rate received by the employee during the last 3 years of employment, or the final regular rate received by the employee, whichever is higher.  
29 CFR §553.21 & .27
- (f) The county should keep a record of compensatory time earned each workweek, compensatory time used each workweek, and the number of hours of compensatory time compensated in cash and the total amount and date paid, for each employee subject to compensatory time provisions.  
29 CFR §553.50

For additional information:

State overtime laws: <https://erd.dli.mt.gov/>

FLSA: <https://www.dol.gov/agencies/whd/flsa>

Regarding definitions of “bona fide executive, administrative, or professional capacity,” see the Secretary of State’s website at <https://sosmt.gov/>

Compensatory time accumulated by an employee of a state agency as defined in 2-2-102 who dies in an accident while on the job and before being able to use the compensatory time must be converted at 100% of its value to a death benefit to be paid to the employee's beneficiary or estate.

MCA 2-18-623

## **GROUP INSURANCE**

Upon approval by two-thirds vote of officers and employees, the county shall enter into group hospitalization, medical, health, including long-term disability, accident or group life insurance contracts or plans for the benefit of the officers and employees and their dependents.

MCA 2-18-702(1)(a)

**Note:** For this purpose, an employee is defined as including a permanent, seasonal, or temporary, full-time or part-time employee, or an elected official.

MCA 2-18-701

The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

MCA 2-18-702(1)(a) & 703(7)

The board of county commissioners may, at its discretion, consider the employees of private, nonprofit economic development organization, hospitals, health centers, or nursing homes to be employees of the county solely for the purpose of participation in these group insurance contracts or plans.

MCA 2-18-702(1)(b) & (c)

The board may require such an employee or entity to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

The board of county commissioners of a county having taxable value of less than \$30 million, or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home or nursing home, or hospital district from participation in these group contracts or plans.

The county’s premium contributions may exceed but may not be less than \$10 a month.

MCA 2-18-703(4)(a)

**Permissive Medical Levy:** Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection 2-18-703(4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.  
MCA 2-18-703(4)(b), MCA 2-9-212(2)

**Note:** See CO02 Budgets for calculation of the permissive medical levy.

Unused employer contributions for any employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible or to increase the reserves of the group.  
MCA 2-18-703(6)

**Payment in Lieu of Participation in Group Plan:** A board of county commissioners may, in exercising its general authority to manage county business and set employee compensation, offer payment to a county employee in lieu of an employee's participation in a group health plan.  
AGO #11, Vol. 51

**Note:** Although MCA 2-18-703(2)(e) prohibits a *state* employee from receiving payment in lieu of participation in a state-sponsored group benefit plan, there is no similar prohibition for local government employees. Although an employee could not compel a local government to offer this benefit, it appears that the local government could offer this benefit and not conflict with State law.

### **AFFORDABLE CARE ACT (ACA)**

Provisions of ACA are being continually amended. Please go to <https://www.healthcare.gov/small-businesses/> for updated and additional information.

### **VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION (VEBA)**

The VEBA, which is centrally administered by the Montana Department of Administration, provides members with individual health care expense trust accounts to pay qualified health care expenses of members, their dependents, and their beneficiaries. Under the plan, employer contributions, investment earnings, and payments for qualified health care expenses are tax-exempt. A local government, however, is not prohibited from establishing a similar program as an alternative or in addition to participation in the State VEBA plan discussed here. For more information on VEBA see <https://montanaveba.mt.gov/>.

As either initiated by the local government (the contracting employer), or at the request of at least 25% of its employees, the local government may hold an election to determine whether all the employees, or a specified group of employees, will form an association for the purpose of participating in the plan. If a majority of employees vote to form an association, all current and subsequently-hired employees must become plan members. The local government shall enter

into a contract with the Department of Administration, and shall operate the association in a manner prescribed by that Department.

MCA 2-18-1310

Deleted effective April 1, 2021: In a manner prescribed by the Department, a local government shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period. A member may annually convert only sick leave hours in excess of 240 hours, and no more than the maximum prescribed by the local government.

MCA 2-18-1311(1) & (2)(a)

Prior to April 1, 2021: When the member's employment is terminated, the member's unused sick leave balance may be converted, in whole or in part, to an employer contribution to the member's account. For those amounts of sick leave not converted to employer contributions, the balance is allocated as required under 2-18-618(6). Effective April 1, 2021: When the member's employment is terminated, the member's unused sick leave balance may be converted to a tax-free employer contribution to the participant account. At termination of employment, the member's unused vacation leave balance may be converted to a tax-free employer contribution to the participant account as provided for in 2-18-617.

MCA 2-18-1311(1) & (3)

The amount of the employer contribution to a Prior to April 1, 2021: member's Effective April 1, 2021: participant's account for hours converted must be equal to  $\frac{1}{4}$  of the accumulated sick leave, and must be computed on the basis of the employee's salary or wage at the time of the conversion. A Prior to April 1, 2021: member Effective April 1, 2021: participant may not later receive, as sick leave credit or as a lump-sum payment, amounts contributed to the Prior to April 1, 2021: member's Effective April 1, 2021: participant account pursuant to this section. Effective April 1, 2021: This section does not prohibit an employer from making other contributions permitted by statute and federal law or from entering into an agreement with a participant for employer contributions to a participant account in addition to the contributions provided for under this section.

MCA 2-18-1311(2) & (4)

## **STATE & FEDERAL TAX WITHHOLDINGS**

For additional information:

- (a) State tax withholding laws, see the website for the State Department of Revenue Withholding Tax Guide at <https://mtrevenue.gov/publications/withholding-tax-guide-with-montana-withholding-tax-tables/>
- (b) Federal tax withholding laws, see the website for the IRS at <http://www.irs.gov/publications/p15/index.html>

The amount of state and federal taxes withheld from an employee's wages is based on the marital status and withholding allowances indicated on the employee's federal Form W-4. An employee can have a separate W-4 for state purposes and may elect to have a different number of

allowances for federal and state purposes. If line 5 of the Form W-4 is left blank, the employee is deemed to be claiming zero withholding allowances. Withholdings may not be based on a fixed dollar amount or percentage, although the employee may specify an additional dollar amount to be withheld.

Although an employee may claim exemption from federal income tax withholding, there is no such provision for exemption from Montana state income tax withholding. If a federal exemption is claimed, wages for that employee are still subject to Social Security and Medicare taxes.

Salaries and wages of elected county officials are subject to State income tax withholding.

Payments to employees that are not subject to State income tax withholding include:

- (a) Employee business expense reimbursements, as long as each reimbursement is entered separately in the county's records and there is documentation that the expenses were incurred while conducting business. Reimbursements must be based upon actual, receipted expenses, or on meal, lodging and mileage amounts allowed to State employees.
- (b) Employer payments or contributions for employee benefit group plans, such as retirement, sickness or accident disability, medical, hospitalization or death.
- (c) Employee contributions to qualifying annuity contracts, such as annuity plans or deferred compensation plans.
- (d) Employee contributions to flexible spending accounts for medical and/or dependent care and health, dental and/or vision insurance premiums that exceed the employer's contribution.

**Note:** Technically, these employee "contributions" are actually payments deducted from an employee's gross pay for cafeteria (aka Section 125) plans. Typically, the payroll records will show "gross wages", "Medicare wages", "Social Security wages", etc. to show the amount of applicable wages to which the tax rate is applied.

## **STATE UNEMPLOYMENT INSURANCE**

The following is summarized from the "Employer Handbook," which can be found at the website for the State Department of Labor & Industry: <http://uid.dli.mt.gov/>

- (a) Local governments are exempt from Federal unemployment insurance.
- (b) State law related to Unemployment Insurance: MCA Title 39, Chapter 51.
- (c) All state and local governmental entities must be covered by Unemployment Insurance. Governmental entities may be assigned a governmental experience rate or may elect to become a reimbursable employer.

**Tax on Total Wages:** Governmental and reimbursable accounts do not have a taxable wage base and must pay tax on total wages.



**Administrative Fund Tax** - is an assessment paid by all employers subject to Montana Unemployment Insurance and is due and payable with the quarterly wage reports. Governmental rated employers are assessed at 0.09% and reimbursable employers are assessed at 0.08% on total wages.

The following are considered to be taxable for purposes of unemployment insurance (please see Handbook for additional payments):

- (a) Bonuses
- (b) Cafeteria plan deductions under IRC Section 125
- (c) Deferred compensation
- (d) Dependent care assistance programs under IRC Section 129
- (e) Holiday, Sick and Vacation Pay
- (f) Income tax withholding
- (g) Retirement and Pension Plans: Elective *employee* contributions, salary reductions or deferrals to a 401(k) or any other type of retirement plan.
- (h) Vehicles – personal use of a company vehicle.

The following are not considered to be taxable for purposes of unemployment insurance: (please see Handbook for additional payments)

- (a) Employee business expense reimbursement: actual expenses, if documented and entered separately in business records, and non-receipted travel expenses at the rate allowed for state employees.
- (b) Insurance: Accident, health & life insurance premiums paid by the employer for the employee or the employee's immediate family.
- (c) Mileage reimbursement (at IRS mileage rate).
- (d) Retirement and pension plans – employer contributions to a qualified pension or retirement plan.
- (e) Salaries and payments to elected officials and election judges
- (f) Payments into a VEBA.

**Quarterly reporting:** Wage reports and payments must be made quarterly and must be postmarked by April 30, July 31, October 31, and January 31 for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Quarters, respectively.

Failure to file the quarterly report by the due date results in a late filing penalty of \$25. In addition, interest is assessed monthly at 1.5% on tax not paid when due (18% interest rate per annum).

## **WORKERS' COMPENSATION**

Find Workers' Compensation regulations at <http://erd.dli.mt.gov/work-comp-regulations>

The Workers' Compensation Act of Montana, with limited exceptions, requires all employers to cover their full-time, part-time, seasonal, or occasional employees with workers' compensation insurance.

All workers' compensation insurance premiums are to be paid by the employer. Employers may not deduct any part of the premiums from employees' pay.

MCA 39-71-406

A local government employer may elect coverage under compensation plans Nos. 1, 2, or 3.

Plan 1 - self-insured

Plan 2 – private insurance companies

Plan 3 – Montana State Fund.

MCA 39-71-403

The premium that an employer pays is based on a percentage of the employees' payroll, which is in turn based on a class code rate and an experience modification factor. The payment schedule is spelled out in the individual employer's insurance policy.

Title 39, Chapter 71, Parts 21, 22, & 23

“Employee” or “Worker”, for purposes of workers' compensation coverage, is defined at MCA 39-71-118, and includes:

(a) All elected and appointed paid public officers

MCA 39-71-118(1)(a)

(b) A volunteer firefighter as described in 7-33-4109 (i.e., with a 2nd-class city), or a person who provides ambulance services under Title 7, chapter 34, part 1 (i.e., for a county, city or town ambulance service).

MCA 39-71-118(1)(g)

Generally, a volunteer is not considered to be an employee for purposes of workers' compensation coverage (unless otherwise entitled to coverage under Montana law). For this purpose, a volunteer is defined as a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

MCA 39-71-118(2)(b)

An employer *may elect* to include as an employee for these purposes a volunteer as defined in subsection (2)(b) (see above), a volunteer emergency care provider as defined in subsection (10), or a volunteer firefighter as defined in 7-33-4510. An ambulance service not otherwise covered by subsection (1)(g) (see above) or a paid or volunteer nontransporting medical unit as defined in MCA 50-6-302 in service to a town, city, or county may elect to include a volunteer emergency care provider.

MCA 39-71-118(3) & (10)

An employer (defined as a rural fire district, fire service area, volunteer fire department, volunteer fire company or a volunteer rural fire control crew, but not the governing body of a first or second-class city that provides workers' compensation coverage to employees) *may* provide workers' compensation coverage to any volunteer firefighter (including a volunteer EMT) who is listed on a roster of service. If an employer does not provide workers' compensation coverage, the employer shall annually notify the employer's volunteer firefighters that coverage is not provided.

MCA 7-33-4510

A firefighter for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter meets the requirements of 39-71-1402 and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

MCA 39-71-1401

Each law enforcement agency that utilizes reserve, auxiliary or special services officers shall provide full workers' compensation coverage while the officers are providing actual service for a law enforcement agency. "Auxiliary officers" include members of a recognized search and rescue unit.

MCA 7-32-203; AGO #97, Vol. 42

## **SOCIAL SECURITY & MEDICARE**

More detailed information on Social Security and Medicare coverage for local government employees can be obtained from the following:

**State Social Security Administrator**

Department of Administration  
State Financial Services Division  
125 No. Roberts St., Rm. 255  
PO Box 200102  
Helena, MT 59620-0102  
(406) 444-4689  
[mtssa@mt.gov](mailto:mtssa@mt.gov)

**Social Security Administration**

10 West 15th Street, Suite 1600  
Helena, MT 59626

**Internal Revenue Service**

10 West 15th Street, Suite 2300  
Helena, MT 59626

The State and Local Coverage Handbook can be found at: <http://www.ssa.gov/slge/slch.htm>  
FAQ can be found at: <https://www.ssa.gov/slge/faqs.htm>

Section 218 Agreements for a local government should be on file with the local government entity. In addition, a copy should be available from the State Social Security Administrator (SSSA): call 444-4689 to determine if a Section 218 Agreement (a.k.a. Modification) is on file.

Local government employees may be covered by Social Security and must be covered for Medicare in one of three ways.

1. Voluntary Coverage through a federal-state agreement called a Section 218 Agreement (authorized under Section 218 of the Social Security Act) - These agreements should specify the Social Security and Medicare coverage for local government employees as a coverage group. Employees covered for social security under a Section 218 Agreement are automatically covered for Medicare.

If the employees participate in a retirement system, concurrent Social Security coverage is allowed, provided a Section 218 Agreement is in place to permit it. If the employees are in a retirement system, paying the Social Security portion of FICA tax, and do not have a Section 218 Agreement in place, the local government is likely making erroneous payments for employees.

There may be exclusions for certain groups of employees. See the following for services that are mandatorily excluded from Section 218 coverage at <https://secure.ssa.gov/apps10/poms.nsf/lnx/1930001356>

See the following for certain services and positions within a coverage group that may be excluded from Section 218 coverage at <https://secure.ssa.gov/apps10/poms.nsf/lnx/1930001357>

2. Mandatory Social Security Coverage – Local Government employees, who are not covered under a retirement system or a Section 218 Agreement, must participate in the Social Security Insurance program through Section 210 mandatory coverage provisions of the Social Security Act. Per item three below, this provides Medicare coverage as well.

As political subdivisions are required to have a Section 218 Agreement in place to allow participation in the Social Security Insurance program, it is advised that the entity contact the State Social Security Administrator for assistance in correcting the administrative error.

3. Mandatory Medicare Coverage - Local government employees hired (or rehired) after March 31, 1986, are subject to mandatory Medicare coverage. Public employees covered for Social Security under a Section 218 Agreement are already covered for Medicare. Employees whose services are not covered for Social Security but who are required to pay the Medicare-only portion of FICA are referred to as Medicare Qualified Government Employees (MQGE). Employees who have been in continuous employment with the employer since March 31, 1986, who are not covered under a Section 218 Agreement nor subject to the mandatory Social Security and Medicare provisions, remain exempt from both Social Security and Medicare taxes, provided they are members of a public retirement system.

For more information: [https://www.ssa.gov/slge/mand\\_med\\_cov.htm](https://www.ssa.gov/slge/mand_med_cov.htm)

The employer and employee tax rates for Social Security are both 6.2% (12.4% total). The employer and employee tax rates for Medicare are both 1.45% (2.9% total).

The wage base limit (i.e., the maximum wage that is subject to tax) for Social Security changes periodically.

2016, \$118,500  
2017, \$127,200  
2018, \$128,400  
2019, \$132,900

2020, \$137,700

2021, \$142,800

There is no wage base limit for Medicare.

Payments deducted from an employee's gross pay for cafeteria plans (aka, Section 125 plans) are not subject to social security and Medicare withholdings.

**Suggested Audit Procedure:**

Is the local government entity covered by a Section 218 Agreement?

If YES - Obtain and review a copy of the Section 218 Agreement to verify that employee coverage for Social Security and Medicare is in accordance with the entity's Section 218 Agreement.

If NO – Determine whether the entity pays its taxes through another entity's Federal Employer Identification Number (FEIN). If so, determine whether the entity whose FEIN is used in employer tax filings has a Section 218 Agreement in place.

If YES – Ensure the paying entity has a Section 218 Agreement in place.

If NO – Move to next step.

If NO – Is the entity a participant in a public retirement system?

If YES – Please Notify the SSSA. An entity in a public retirement system may also voluntarily provide Social Security and Medicare coverage, but it requires a Section 218 agreement to properly effectuate the concurrent coverage.

If NO – Verify that the entity is providing mandatory Social Security and Medicare coverage under Section 210. Please Notify the SSSA as a Section 218 Agreement should be put into effect to allow coverage in the proper administrative manner.

If YES – Verify that the entity is providing Medicare coverage to its employees.

If YES and if the entity has employees hired prior to 4/1/86 – Are employees hired prior to 4/1/86 covered by a Section 218 Agreement that provides Medicare-only coverage?

If YES – Verify that the entity is providing Medicare-only coverage for those employees.

If NO – Determine whether the Medicare Continuing Employment Exception applies.

If this exception doesn't apply, verify that the entity is providing Medicare-only coverage for those employees.

If the Exception does apply – there is no requirement that the entity provide Social Security or Medicare coverage for employees, who are retirement system participants hired prior to 4/1/86.

For employees covered by social security and/or Medicare under either a Section 218 Agreement or mandatory federal laws and regulations, test to determine that employee withholdings and employer contributions are in accordance with applicable federal laws and regulations. For selected individuals whose wages exceed the social security wage base limit, verify that no social security tax was withheld for the portion of the wages that exceeded the wage base limit. Also, verify that Medicare tax was withheld on the portion of the wages that exceeded the social security wage base limit.

If a local government has recently consolidated, verify that a new Section 218 Agreement has been obtained, if necessary. **The State Social Security Administrator should be contacted for this information.** Section 218 Agreements of the two “pre-consolidation” entities may no longer be applicable to the consolidated government.

### **Historical Background and Additional Information**

See also: <https://www.ssa.gov/pubs/>. Type in publication number 05-10051.

When the Social Security Act was enacted in 1935, public employees were not eligible for social security coverage. In 1950 Congress created Section 218 of the Social Security Act, which allows states to enter into voluntary agreements for social security coverage with the Social Security Administration. After a state has a Modification in place, it can then enter into voluntary agreements with political subdivisions within their state.

A Section 218 Agreement is a written agreement voluntarily entered into between a state and the Social Security Administration, to provide Social Security and Medicare or Medicare-only coverage to employees of state and/or local governments. Local government employees covered under the Agreement have the same coverage and benefit rights as employees in the private sector. All states have a Section 218 Agreement, but the extent of coverage varies. Section 218 Agreements are permanent and cannot be terminated.

For governments that only provide coverage under Section 210, when a Section 218 Agreement is sought, the employees are afforded coverage as an Absolute Coverage Group (ACG). Once this is in effect, even if the government were to later join a retirement system, the ACG modification remains, and no other Section 218 Agreements are necessary.

For governments that cover employees within a retirement system and Social Security in Montana, a referendum must be held and the majority (over 50%) of all eligible employees within the local government retirement system must vote to approve the Agreement. If an eligible employee chooses not to vote for the Agreement, it is considered a ‘no’ vote. Once referendum is held with the requesting group, the SSSA coordinates paperwork and relays to the federal partners (SSA and IRS).

If the government has a Section 218 Agreement that covers a specific retirement system (referred to as a Section 218 (d)(4) coverage group) and the entity joins another system, a new modification will likely need created. Please contact the SSSA for guidance.

If a local government consolidates (i.e., a city with a county or an elementary school with a high school) the entity may need to obtain a new Section 218 Agreement. Prior to any consolidation, entities should contact the SSSA for guidance.

### **FORM 1099-MISC**

For instructions to Form 1099-MISC, go to

<https://www.irs.gov/forms-pubs/about-form-1099-misc>

The entity must report on a Federal Information Return, Form 1099-MISC, all “nonemployee compensation” that meets the following four conditions:

- (a) You made the payment to someone who is not your employee;
- (b) You made the payment for services in the course of your trade or business (including government agencies and nonprofit organizations);
- (c) You made the payment to an individual, partnership, estate, or, in some cases, a corporation; and
- (d) You made payments to the payee of at least \$600 during the year.

U.S. Internal Revenue Service Codes

The following are some examples of payments to be reported on Form 1099-MISC: (For a complete list, contact the IRS):

- (a) Professional service fees, such as fees to attorneys (including corporations), accountants, architects, contractors, subcontractors, engineers, etc.
- (b) Payments by attorneys to witnesses or experts in legal adjudication.)

## **IMMIGRATION AND NATURALIZATION SERVICE (INS) FORM I-9**

All employers must complete and retain a Form I-9 for each individual they hire for employment – both citizens and non-citizens. Both employees and employers must complete the form.

The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9.

Employers must retain an employee’s complete Form I-9 for as long as the individual works for the employer. Once the individual’s employment has terminated, the employer must retain the Form I-9 for either three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials.

For further information, go to <https://www.uscis.gov/i-9>. A Handbook for Employers can be found at this link.

## **NEW HIRE REPORTING**

For more information regarding this Federal law see

<https://www.acf.hhs.gov/css/employers/employer-responsibilities/new-hire-reporting>

For a copy of the Montana Employer’s Guide to New Hire Reporting see

<https://dphhs.mt.gov/assets/cssd/Newhireemployerreportingguide.pdf>

An employer doing business in the state shall report to the Department of Public Health and Human Services (DPHHS) the hiring or rehiring of an employee to whom the employer anticipates paying income, either by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by DPHHS. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may be made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.

MCA 40-5-922

### **RECORDKEEPING**

OMB Circular A-87/UGG and ARM 24.16.6102 require employers to keep payroll (time and effort) records. These records are required to be preserved for three years. For a listing of items required to be included in payroll records, see the Secretary of State's Administrative Rules at <http://www.mtrules.org/gateway/RuleNo.asp?RN=24%2E16%2E6102>

Employee Pay Stub: All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction. Where no deduction is made, the employer shall give to the employee a statement that the payment does not include any such deductions.

MCA 39-3-101

### **EMPLOYMENT LEAVE OF ABSENCE GRANTED - ELECTED OFFICIAL**

Employers of employees elected or appointed to a public office in the city, county, or state shall grant the employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

MCA 39-2-104(1)

An employee granted a leave of absence shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless the employee is unable to do so because of illness or disabling injury certified to by a licensed physician.

MCA 39-2-104(2)



Unemployment benefits paid to a person by application of this section may not be charged against an employer under the unemployment insurance law.  
MCA 39-2-104(3)



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES  
LONG-TERM DEBT**

REVISION JANUARY 2022

REF: CO08

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**USE OF BOND PROCEEDS AND BORROWED MONEY**

Except as otherwise provided by law, money borrowed by a local government may be used only for the purpose for which the money was borrowed. Unless restricted by law, surplus borrowed money may be used to redeem the debt for which the money was borrowed.

MCA 7-6-4011(1), MCA 7-7-2407, MCA 7-6-1102

**APPROPRIATION OF BOND PROCEEDS**

The authorization of bonds by the electors or the governing body constitutes the appropriation of the bond proceeds for the purpose for which the bonds are authorized.

MCA 7-6-4011(2)

**LIMITATION ON AMOUNT OF COUNTY INDEBTEDNESS AND BORROWINGS**

Usually the determination of whether or not a county complies with the debt limitations should be made prior to the time the new indebtedness is incurred. For bond debt limitation determination when a county has not incurred new debt, the determination would be based on the laws that were in effect when the county last incurred new bonded debt.

**Aggregate Indebtedness:** A county may not issue bonds or incur other indebtedness for any purpose in an amount, including existing indebtedness, that in the aggregate exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county as ascertained by the last assessment for state and county taxes. (2) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.

MCA 7-7-2101(1) & (2)

**Borrowings:** Based upon the taxable valuation of a county and not exceeding the limits on county indebtedness established in 7-7-2101 (above), a county may borrow the following amounts without a vote of the electorate:

- (a) up to \$1 million if the county's taxable value is less than \$50 million;
- (b) up to \$1.5 million if the county's taxable value is between \$50 million and \$100 million;
- and
- (c) up to \$2 million if the county's taxable valuation is greater than \$100 million.

MCA 7-7-2402(2)

**Note:** MCA 7-7-2101 and MCA 7-7-2402, discussed above, appear to contain conflicting provisions. AGO #13, Vol. 42 discusses that these two statutes were enacted the same year by the same legislature and have different objectives. MCA 7-7-2101 limits the creation of liability or indebtedness, while MCA 7-7-2402 limits the borrowing of money, terms which are not synonymous. A county can incur a liability or indebtedness without borrowing money. To clarify, this AGO gives the following examples:

1. Action taken by the board of county commissioners in contracting to remodel an airport building creates an indebtedness or liability against the county. The county did not borrow money to pay the contract price because it had funds on hand for the initial expenditure, and intended to raise the remaining amounts through tax levy that year.
2. An installment purchase contract is an incurring of a liability or indebtedness without borrowing money. An installment purchase contract is not “borrowing money” within the meaning of MCA 7-7-2402.
3. “Borrowing of money” includes the issuance of bonds, notes, and warrants.

**General Obligation Bond Limit:** A county may not issue general obligation bonds for any purpose in an amount that, with all outstanding bonds and warrants except emergency bonds, exceeds the debt limitation referred to in 7-7-2101 (above).

MCA 7-7-2203(1)

**Bridge, Road and Highway Bond Limit:** Except as otherwise provided in 7-7-2203 (see above) and below, a county may not issue bonds in an amount that, with all outstanding bonds and warrants except emergency bonds, exceeds 0.68% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes. The value of the bonds issued and all other outstanding indebtedness of the county may not exceed 2.5% of the total assessed value of taxable property, determined as provide in MCA 15-8-111, within the county.

MCA 7-14-2524(1) & (3)

The county may issue bonds in an amount that, with all outstanding bonds and warrants, exceeds 0.68% but does not exceed 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

MCA 7-14-2524(2)

**Road and Highway Bond Limit – Outside City or Town:** Road and highway bonds issued under MCA 7-14-2520 (i.e., limited obligation bonds – within the county but outside of an incorporated city or town) may not be issued in a principal amount that, with all the bonds and warrants of the county, exceeds 0.68% of the total assessed value of taxable property, determined as provided in MCA 15-8-111, in the county, exclusive of the total assessed value of taxable property in all incorporated cities and towns located in whole or in part within the county.

MCA 7-14-2520(5)

#### **Exceptions to Debt Limitations:**

**Conservation Easement:** The limitations of 7-7-2101(1) do not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6.

MCA 7-7-2101(2)

For the purposes of open space lands and conservation easements, a county may issue and sell its general obligation bonds.

MCA 76-6-109(2)(c)

**Lease-Purchase:** A lease-purchase agreement that includes a non-appropriation clause and that allows for termination without penalty to a county does not constitute indebtedness or liability for purposes of MCA 7-7-2101(1) or (2) and therefore does not require voter approval.  
AGO #3, Vol. 52

**Installment Purchase Contract:** An installment purchase contract is not a “borrowing of money” within the meaning of MCA 7-7-2402.  
AGO #13, Vol. 42

**Repayment of Tax Protests:** The limitation in 7-7-2203(1) does not apply to bonds issued for the repayment of tax protests lost by the county.  
MCA 7-7-2203(2), MCA 15-1-402(7)(c) provides for issuance of bonds for this purpose.

**Short-Term Obligations:** The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to Effective April 8, 2021: gross proceeds obligations or short-term obligations (tax and revenue anticipation notes.)  
MCA 7-6-1115

**Advance Refunding Bonds:** Bonds that are refunded by advance refunding bonds are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation.  
MCA 7-7-2316(4)

**Revenue Bonds:** Revenue bonds do not constitute a debt of the county within the meaning of any constitutional or statutory limitation or provision.  
MCA 7-7-2501, MCA 7-7-4423

Bonds issued for funding a tax increment financing district (TIF).  
MCA 7-15-4321

**Self-Insurance or Deductible Reserve Funds:** A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes do not constitute debt within the meaning of any statutory debt limitation.  
MCA 2-9-211(5)

**County Health Care Facilities:** Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county may borrow money and issue its bonds for a health care facility or a boarding home, including refunding bonds.  
MCA 7-34-2411

**Clean Renewable Energy Bonds:** CREB revenue bonds do not constitute indebtedness for the purpose of statutory debt limitations.

MCA 90-4-1205(2)

**Election Not Required:** It is not necessary to submit to the electors the question of issuing bonds or borrowing money for the following purposes:

**Refundings:** refunding outstanding bonds.

MCA 7-7-2311, MCA 7-7-2402(4), MCA 7-7-2203(2)

The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

MCA 7-7-107(2))

**Change in County Status:** enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

MCA 7-7-2221, MCA 7-7-2402(4)

**Judgments:** funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction.

MCA 7-7-2221

**Repayment of Tax Protests:** Bonds issued for the repayment of tax protests lost by the county may be issued without being submitted to an election.

MCA 15-1-402(7)

**City-County Consolidated Governments:** Except as provided in 7-7-108, below, a city-county consolidated local government may not issue bonds for any purpose in an amount that, with all outstanding indebtedness, exceeds 2.5% of the total assessed value of taxable property, determined as provided in MCA 15-8-111, within the consolidated government, as ascertained by the last assessment for state and county taxes.

MCA 7-7-107

**Additional Indebtedness for Water or Sewer Systems:** For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government that owns and controls the water supply and water system and devotes the revenue from the supply and system to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both purposes may not in the aggregate exceed 10% over and above the debt limitation referred to in 7-7-107, above.

MCA 7-7-108

## **GENERAL OBLIGATION (G.O.) BONDS – PURPOSES & TERMS**

The board of county commissioners may issue general obligation bonds for any of the following purposes, for the terms indicated:

For a term of no longer than 20 years, the following purposes:

- (a) acquiring land for any public use or activity;
- (b) constructing, erecting, or acquiring by purchase public buildings; making additions to and repairing buildings; and furnishing and equipping the buildings;
- (c) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water; and
- (d) funding, paying in full, or compromising, settling, and satisfying any judgment rendered against the county in a court of competent jurisdiction, including the repayment of tax protests lost by the county, when there are not sufficient funds available to pay the judgment. (See also MCA 2-9-316)
- (e) constructing bridges and highways.

For a term of no longer than 10 years, the following purposes:

- (a) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;
- (b) funding, paying, and retiring outstanding county warrants lawfully issued against the county general fund, road fund, or bridge fund when there is insufficient money in the fund, and the levying of taxes within a period of 3 years would be an undue burden upon the taxpayers of the county.

MCA 7-7-2201, 2202, & 2206, MCA 7-7-2111

**Redemption of bonds:** Other than refunding bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be stated on the face of the bonds.

MCA 7-7-2207

For these purposes, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies taxes to pay principal and interest on the bonds.

MCA 7-7-2206(5)

## **TYPES OF G.O. BONDS ALLOWED**

**Amortization or Serial:** Except for citizen bonds discussed below, bonds issued by any county must be either amortization bonds (as defined in 7-7-2210) or serial bonds (as defined in 7-7-2211).

MCA 7-7-2209(1)

**Citizen Bonds:** A county authorized to sell general obligation bonds under MCA Title 7, Chapter 7 may issue and sell a portion of the bonds (known as “citizen bonds”) in denominations of less than \$5,000, either by competitive public sale, directly to members of the public, at pre-established interest rates, or by private sale pursuant to 17-5-107.

**MCA 7-7-2212(1) & (2)**

Citizen bonds may be issued for any purpose for which a county may issue general obligation bonds.

**MCA 7-7-2212(3)**

Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, without preference for amortization bonds.

**MCA 7-7-2209(2)**

**Note:** See MCA 7-7-2215 for definition of capital appreciation and zero-coupon bonds.

**G.O. BONDS – ISSUANCE WITHOUT ELECTION**

Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

- (a) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line;
- (b) satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction; and
- (c) refunding general obligation bonds.

MCA 7-7-2221, MCA 7-7-2311

**Resolution Adopted:** In order to issue bonds for any of the above purposes, it shall only be necessary for the board of county commissioners to pass and adopt a resolution setting forth the facts and showing the reason for issuing such bonds, give notice of the sale thereof, and to then follow the procedure prescribed in this part for the sale and issuance of such bonds. Such bonds shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids.

MCA 7-7-2222

**G.O. BONDS – VOTER APPROVAL REQUIRED**

Except as noted above, county bonds may not be issued unless the question of issuing bonds is submitted to the registered electors of the county voting at an election conducted in accordance with Title 13, chapter 1, part 4.

MCA 7-7-2223(1)

A bond election may be called if the board of county commissioners either:

- (a) initiates and unanimously adopts a resolution in accordance with the provisions of 7-7-2227(2); OR
- (b) receives a petition, delivered and certified by the election administrator, asking that the election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county.



MCA 7-7-2223(2)

**Note:** Provisions related to the petition and election discussed above are found at MCA 7-7-2224 to 2229.

**Voter Approval or Rejection:** The issuance of the general obligation bonds is considered approved at the election if the following results are achieved:

- (a) 40% or more of the qualified electors vote on the bond issue and a majority of the votes were in favor of the proposition, or
- (b) more than 30% but less than 40% of the qualified electors vote on the bond issue and 60% of the votes were in favor of the proposition.

When these results are not achieved, or when the percent of qualified electors voting is 30% or less, the proposition is considered to be rejected.

MCA 7-7-2237

### **G.O. BONDS – SALE AND ISSUANCE**

**Resolution Calling for Sale of Bonds:** If the voters approve the issuance of the general obligation bonds, and if the board of county commissioners conducts a public sale, the board of county commissioners shall adopt a resolution calling for the sale of the bonds. The resolution must state the specific terms of the bonds, as listed at 7-7-2238(2), including the minimum purchase price of the bonds. The board may fix the minimum price for the bonds in an amount less than the principal amount of the bonds, which may not be less than 97% of the principal amount, if the board determines that a sale at that price is in the best interests of the county.

MCA 7-7-2238

**Publication of Notice of Sale:** If the county conducts a public sale, the board of county commissioners shall publish notice of the bond sale in the official newspaper of the county as provided in 17-5-106, in the form provided at MCA 7-7-2251.

MCA 7-7-2252

**Sale of Bonds:** Any bonds issued under MCA Title 7, Chapter 7, Part 22 may be sold at public or private sale as determined by the board of county commissioners, pursuant to 17-5-107. The bonds may not be sold at less than the minimum bid specified for their sale with accrued interest to date of delivery. The board shall accept the bid that it judges most advantageous to the county, and may reject any bids and sell the bonds at private sale if considered in the best interests of the county.

MCA 7-7-2254

Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, preparation of the bonds, or negotiating the sale of the bonds.

MCA 7-7-2254

**Resolution Providing for Issuance of Bonds:** At the time of the sale of the bonds or at a meeting held after the sale, the board of county commissioners shall adopt a resolution providing

for the issuance of the bonds, prescribing the form of the bonds, whether amortization bonds or serial bonds, providing the manner of execution of the bonds, and if applicable, specifying whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

MCA 7-7-2255

### **G.O. BONDS – BOND SINKING FUNDS**

There must be a separate sinking fund account for each series or issue of outstanding bonds issued by the county.

MCA 7-7-2261

All taxes collected for interest and principal on county bonds must be credited to the sinking fund for which the taxes were levied.

MCA 7-7-2261

Interest from investment of money in a sinking fund account may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.

MCA 7-7-2261

**Administration of Sinking Fund:** The sinking fund must be administered as provided in 7-7-123, 7-7-124, and 7-7-2270 (see following).

MCA 7-7-2261(4)

**Investment of Sinking Fund:** Except as provided in 7-7-124 (below) and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 (below), the board of county commissioners shall invest so much of the bond sinking funds of the county as are not needed for the payment of bonds or interest. The investments made must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable. All interest income must be credited to the sinking fund for which the investment was made. MCA 7-7-123

If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the money in the sinking fund is not subject to investment but shall be used and applied in payment and redemption of the bonds.

MCA 7-7-124, MCA 7-7-2268

**Purchase of Bonds:** Whenever there is money in any sinking fund over and above the amount required for payment of the principal and interest due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series, the county shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the board may feel justified in paying, not in any case exceeding 5%.

MCA 7-7-2270

**G.O. BONDS – TAX LEVY FOR BOND PAYMENTS**

A separate tax must be levied for the payment of interest and principal of each series or issue of bonds outstanding. The levy must be high enough to raise an amount sufficient to pay all interest and principal as will become due and payable during the then-current fiscal year or within 90 days after the fiscal year. If no principal becomes due within that time, then the tax levy must be high enough to place in the sinking fund an amount no less than the total bond issue or series divided by the number of years of the issue or series.

MCA 7-7-2265

**Note:** Excess bond proceeds may not be retained in a separate fund and invested without first using the proceeds to calculate the amount of annual tax levy for a sinking fund.

AGO #18, Vol. 44

**G.O. BONDS – WHEN BONDS FULLY PAID**

When all bonds of any series or issue, with the interest thereon, have been fully paid and there is money remaining in the bond sinking fund, the excess (and all amounts subsequently collected for such fund) shall be transferred to the general fund of the county or to the sinking and interest fund of any other series or issue of bonds outstanding designated by the county commissioners.

MCA 7-7-2274

**REFUNDING G.O. BONDS**

The board of county commissioners may issue bonds (without an election) for the purpose of refunding, paying, and redeeming optional, redeemable, or maturing bonds when:

- (a) there are not sufficient funds available to pay the bonds or there is a reduction in debt service as a result of issuing refunding bonds; AND
- (b) it is considered in the best interests of the county to refund the bonds.

MCA 7-7-2301(1) & 2311

**Term of Bonds:** Bonds issued for these purposes may not be issued for a longer term than 10 years. However, if the unexpired term of the bonds to be refunded is more than 10 years, the refunding bonds may be issued for the unexpired term.

MCA 7-7-2303(1)

The board of county commissioners has the authority to negotiate with the bond holders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest on the bonds as full payment and satisfaction of the bonds, to enter into the agreement, and to issue refunding bonds (without an election) for the amount agreed upon whenever:

- (a) the total indebtedness of a county exceeds 0.3% of the total assessed value of taxable property, determined as provided in 15-8-111, within the county, as ascertained by the last assessment for state and county taxes; and
- (b) the board determines that the county is unable to pay and discharge the indebtedness in full.

These bonds may be issued in more than one series, and each series may be either amortization bonds or serial bonds. The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issue of the bonds.

MCA 7-7-2301(2) & 2311

Bonds issued for this purpose may not be for a longer term than 20 years.

MCA 7-7-2303(2)

**Applicability of Other Bond Provisions:** The provisions of 7-7-2203 through 7-7-2207, 7-7-2209 through 7-7-2211, 7-7-2222, 7-7-2255 through 7-7-2266, 7-7-2268 through 7-7-2270, and 7-7-2272 through 7-7-2274 apply to refunding bonds issued under this part; however, the board of county commissioners may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-2251, 7-7-2252, and 7-7-2254.

MCA 7-7-2302

**Interest Rate on Refunding G.O. Bonds:** Except as provided below, refunding bonds may not be issued unless they bear interest at a rate of at least 1/2 of 1% less than the outstanding bonds that are to be refunded. Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the county. **Note:** See MCA for details related to bonds refunded that bear interest at a variable rate.

MCA 7-7-2304(1) & (3)

Refunding bonds may bear interest in excess of the rate on the bonds being refunded if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county.

MCA 7-7-2304(2)

**Advance refunding bonds:** The board of county commissioners may issue refunding bonds to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the refunding bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state.

MCA 7-7-2316(1)

Except as provided below, the funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on those dates and bear interest at those rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each

bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

MCA 7-7-2316(2)

If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described above or in a money market fund composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3). (See CO04-Cash & Investments)

MCA 7-7-2316(3)

The escrow account is irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the sinking fund account for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the county to the escrow account. The county may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation.

MCA 7-7-2316(4)

### **G.O. BONDS ISSUED FOR CONSTRUCTION OF ROADS AND BRIDGES**

**Road and Highway Bonds:** A county may issue limited general obligation bonds to (a) finance the establishment, construction, reconstruction, improvement, maintenance, and repair of county roads; (b) acquire rights-of-way for roads and highways; or (c) acquire capital equipment or supplies to improve, maintain, or repair roads and highways.

MCA 7-14-2520(1)

The bonds must be authorized by the registered electors of the county, exclusive of the electors residing within the incorporated area of a city or town located in whole or in part within the county.

MCA 7-14-2520(4)

Property taxes for the payment of the principal or interest for these bonds may not be levied by the county against the taxable property in the incorporated area of a city or town located in whole or in part within the county.

MCA 7-14-2520(6)

**Bridge Bonds:** The board of county commissioners may issue general obligation bonds (a) to construct, improve, or acquire rights-of-way for public bridges; (b) to refund, pay, and redeem optional, redeemable, or maturing bridge bonds when there are not sufficient funds available and it is considered in the best interests of the county to refund the bonds.

MCA 7-14-2521 & 2522

**Term of Bonds:** Road, highway and bridge bonds may not be issued for a term longer than 20 years, and must be authorized, sold and issued in accordance with the provision of Title 7, Chapter 7, Part 22, except as those provisions may conflict with the express provisions of this section.

MCA 7-14-2520(3) & 2523

**Note:** Refunding bridge bonds may not be issued for a term longer than 10 years, except that if the unexpired term of the bonds to be refunded is greater than 10 years, the refunding bonds may be issued for the unexpired term.

### **BONDS FOR PAYMENT OF JUDGMENTS**

Counties may issue bonds for deriving revenue for the payment of a judgment or settlement liability. Property taxes may be levied to amortize the bonds.

MCA 2-9-316

### **BONDS/NOTES FOR SELF-INSURANCE OR DEDUCTIBLE RESERVE FUND**

A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, and do not constitute debt within the meaning of any statutory debt limitation.

MCA 2-9-211(5)

### **COUNTY LOANS**

**Authorization to Borrow Money:** The board of county commissioners has jurisdiction and power to borrow money upon the credit of the county to meet current expenses if the county revenue is insufficient.

MCA 7-7-2401

**Election Required to Borrow Money:** The board of county commissioners may not borrow money for any single purpose in an amount exceeding certain limits based on taxable valuation without submitting the question of a loan to a vote of the electors of the county.

MCA 7-7-2402(1)

## **REVENUE BONDS**

A county may issue county revenue bonds or county refunding revenue bonds in the same manner and with the same effect as provided for the issuance of *municipal* revenue and refunding revenue bonds in Title 7, Chapter 7, Parts 44, 45, & 46. All MCA citations below for Parts 44, 45, & 46 are based on this reference in MCA 7-7-2501.

MCA 7-7-2501

County revenue bonds may be issued to finance the following projects or activities:

- (a) to erect, equip, operate and maintain cultural, social and recreational facilities (county fair activities, county parks, cultural facilities such as museums, civic centers, youth centers, recreation centers/complexes, and any combination thereof). (MCA Title 7, Chapter 16, Part 21)
- (b) promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes when economically feasible. (Title 75, Chapter 10, Part 1)

MCA 7-7-2501

A county may borrow money and issue its bonds for a health care facility or a boarding home, including refunding bonds, payable out of any revenue of the facility or boarding home, respectively.

MCA 7-34-2411

A county or consolidated city-county government may issue revenue bonds to finance the construction and construction engineering phases of projects on the urban highway system within its jurisdiction.

MCA 7-7-110

If applicable, the county shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

MCA 7-7-2501(4)

**Nature of Revenue Bonds:** No holder of any revenue bonds issued shall have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon. Each bond issued under this part shall recite in substance that (a) said bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and (b) said bond does not constitute a debt of the county within the meaning of any constitutional or statutory limitation or provision.

MCA 7-7-4423

The county issuing revenue bonds shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking. The rates, fees, or charges prescribed, along with any other authorized revenues, must produce revenue at least sufficient to (a) pay when due all bonds and interest on the bonds for the payment of which the revenue has been pledged, charged, or otherwise encumbered, including reserves for the bonds; and (b) provide for all expenses of operation and maintenance of the undertaking, including reserves.

MCA 7-7-4424

**Resolution:** Revenue bonds may be authorized to be issued by resolution of the governing body (a) without an election; or (b) when authorized by a majority of the qualified electors voting upon the question at an election conducted in accordance with Title 13, chapter 1, part 4.

MCA 7-7-4426

The resolution shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times. Revenue from the project for which the bonds are issued is the only revenue upon which a lien may apply. A lien may not attach to other revenue or other property within the county.

MCA 7-7-2501, MCA 7-7-4431

**Term of Bonds:** Revenue bonds may mature at a time or times not exceeding 40 years from the date of issue.

MCA 7-7-4432

**Compliance with Resolution & Covenants:** The resolution authorizing the issuance of bonds may contain various covenants. The county must comply with the bond resolution and covenants contained therein.

MCA 7-7-4428 & 4429

### **REFUNDING REVENUE BONDS**

Refunding revenue bonds can either be refunded in accordance with the provisions of Part 45 “Municipal Refunding Revenue Bonds Option 1” or Part 46 “Municipal Refunding Revenue Bonds Option 2”.

**Option 1 Authorization:** Refunding revenue bonds issued as authorized in this section are governed by all of the provisions of Part 44, except 7-7-4433 and 7-7-4434 (See Revenue Bonds). Bonds may be issued to refund interest as well as principal actually due and payable if the revenue pledged is not sufficient, but not to refund any bonds or interest due that may be paid from revenue then on hand.

MCA 7-7-4501

**Option 2 Authorization:** Any county is authorized to refinance or to refinance and improve any enterprise and for such purpose or purposes, to borrow money and issue refunding bonds from time to time.

MCA 7-7-4605

**Interest Rate:** Refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from the computation, is at least  $\frac{3}{8}$  of 1% less than the average annual interest rate on the bonds being refunded, computed



to their respective stated maturity dates. (See MCA 7-7-4502 for details related to variable rate bonds.)

MCA 7-7-4502(1)

**Exceptions to Interest Rate Requirement:** Refunding bonds may bear interest at a rate lower or higher than the bonds being refunded if:

- (a) they are issued to refund matured principal or interest for the payment of which revenue on hand is not sufficient;
- (b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of the new bonds upon the revenue of the undertaking must be junior and subordinate to the lien of the outstanding bonds being refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding;
- (c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county; or
- (d) the governing body determines that the issuance of variable rate refunding bonds is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds.

MCA 7-7-4502(2)

**Escrow:** In any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company that has the qualifications listed at MCA 7-7-4504(1)(a) to (c).

MCA 7-7-4504(1)

The proceeds deposited in escrow shall be invested to provide funds sufficient to pay interest and principal, when due or when pre-payable. The resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all pre-payable bonds in accordance with their terms. Allowable securities to be purchased with the escrow fund shall be limited to those listed at MCA 7-7-4504(2) and shall be purchased simultaneously with the delivery of the refunding bonds.

MCA 7-7-4504(2)

### **COUNTY HEALTH CARE FACILITY REVENUE BONDS**

Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county acquiring, erecting, furnishing, equipping, expanding, improving, or maintaining a health care facility under 7-8-2102 or 7-34-2201 or a boarding home under 7-34-2301 may borrow money and issue its bonds for a health care facility or a boarding home, including refunding bonds, payable out of any revenue of the facility or boarding home. The sums required to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenue of the health care facility or boarding home prior to the payment of current costs of operation and maintenance of the facilities.

## MCA 7-34-2411

The bonds may be issued by resolution of the county governing body without any limitation of amount except:

- (a) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and
- (b) the county shall be obligated to take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

## MCA 7-34-2413

The bonds may be for a 40-year period.

## MCA 7-34-2415

**When Election Required:** A county may not issue bonds to which all or a portion of the taxes levied under 7-6-2512 (county tax levy for health care facility) or under 7-34-2418 (tax when deficiency in revenues) is pledged until the question of approval of the issuance of the bonds has been submitted to the registered electors of the county.

## MCA 7-34-2414

The pledge of the taxes levied under 7-6-2512 to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction.

## MCA 7-6-2512(2)

If the bonds are not paid or are not expected to be paid from ordinary revenue of the facility, a county that has issued bonds under 7-34-2411 for a health care facility may, subject to 15-10-420, levy taxes on the taxable value of all taxable property within the county.

## MCA 7-34-2417

The governing body of a county may, with respect to bonds issued by the county pursuant to 7-34-2411 for a health care facility and if approved by the voters as provided in 7-34-2414, by resolution covenant that: in the event that all revenue, including taxes, appropriated and collected for the bonds is insufficient to pay principal or interest then due, or if a deficiency is likely to occur within 1 year, it will levy a general tax upon all of the taxable property in the county for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount but are limited to a rate estimated to be sufficient to produce the amount of the deficiency.

## MCA 7-34-2418

### **URBAN HIGHWAY SYSTEM REVENUE BONDS**

Upon approval by the Montana Transportation Commission, a city, county, or consolidated city-county government may issue revenue bonds to finance the construction of projects on the urban highway system within its jurisdiction. The bonds may be authorized by a resolution adopted by the governing body without need for authorization by the electors.

MCA 7-7-110(1) & (2)

The bonds do not constitute and may not be included as an indebtedness or liability of the issuer for purposes of any statutory debt limitation, do not constitute general obligations, and may not be secured by the taxing power of the issuer.

MCA 7-7-110(2)

The bonds are payable from and secured by grants or other funds received by the Montana Department of Transportation (MDOT) and apportioned by MDOT to the issuer of the bonds for urban highway system improvements or for improvements conducted as provided in 15-70-101(2) (i.e., gas tax apportionment). In the resolution providing for the issuance of the bonds, the governing body shall irrevocably pledge and appropriate to the debt service fund from which the bonds are payable the funds apportioned or to be apportioned to the issuer by MDOT in an amount sufficient to pay the principal of and the interest on the bonds as due.

MCA 7-7-110(3)

Bonds may be issued only if the final maturity of the bonds is not more than 20 years after the date of issuance of the bonds.

MCA 7-7-110(4)(b)

Proceeds from the sale of the bonds to be used for construction must be deposited with MDOT.

MCA 7-7-110(5)

### **TAX, REVENUE AND BOND ANTICIPATION NOTES**

A local government may issue and sell Effective April 8, 2021: gross proceeds obligations or short-term obligations in anticipation of taxes or revenues budgeted to be received and appropriated for expenditure during the fiscal year in which the obligations are issued. Effective April 8, 2021: Gross proceeds obligations are not general obligations of the local government and are collectible only from the collection of coal gross proceeds taxes, interest, and penalties pursuant to 15-23-708. Short-term obligations are general obligations of the local government and must be secured by the taxes and revenues in anticipation of which the short-term obligations were issued and in such other manner as set forth in the ordinance authorizing their issuance.

MCA 7-6-1102 & 1111

The issuance of Effective April 8, 2021: gross proceeds obligations or short-term obligations must be authorized by an ordinance or resolution of the governing body that fixes the terms, conditions, and rates of the obligations to be issued.

MCA 7-6-1103

Effective April 8, 2021: Gross proceeds obligations may be renewed or refunded by the issuance of gross proceeds obligations. Gross proceeds obligations may not be renewed or refunded to a date later than 5 years from the end of the fiscal year in which the original short-term obligation was issued. Short-term obligations may be renewed or refunded by the issuance of short-term obligations. Short-term obligations may not be renewed or refunded to a date later than 6 months from the end of the fiscal year in which the original short-term obligation was issued.

MCA 7-6-1105

The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to Effective April 8, 2021: gross proceeds obligations or short-term obligations issued in accordance with this part.

MCA 7-6-1115

When all conditions exist precedent to the offering for sale of bonds of a political subdivision or the political subdivision has applied for and received a commitment for a grant or loan of state or federal funds, its governing body may by resolution issue and sell, in anticipation of the receipt of the grant, loan, or bonds in an amount not exceeding the total amount of bonds authorized or the total amount of the loan or grant that is committed, notes maturing within not more than 3 years from the date on which the notes are issued.

MCA 7-7-109(2)(a)

### **INSTALLMENT PURCHASE CONTRACTS**

The county may enter into installment purchase contracts for the purchase of any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind that cost in excess of \$4,000. The period of the installment contract may not be for more than 10 years.

MCA 7-5-2306

### **LONG-TERM LEASE FOR DETENTION FACILITY OPERATION**

A local government may enter into a long-term lease or agreement, not to exceed a term of 30 years, with a corporation proposing to operate a regional detention facility. The local governmental entity may agree in the long-term lease or agreement to acquire the facility from the corporation through a lease or a lease option to purchase, subject to the limitations of Title 7, Chapter 7, Part 21.

MCA 53-30-511

### **DEBT SERVICE FUNDS MAINTAINED FOR SCHOOL DISTRICTS**

The school district shall provide the county treasurer with a general obligation bond, oil and natural gas revenue bond, or impact aid revenue bond debt services schedule. The county

treasurer shall maintain a separate debt service fund for each school district and, if bonds are to be issued as either impact aid revenue bonds or oil and natural gas revenue bonds, shall maintain a separate impact aid revenue bond debt service fund or oil and natural gas revenue bond debt service fund, as applicable, and an impact aid revenue bond debt service reserve account or oil and natural gas revenue bond debt service reserve account, if required. The school district shall credit all tax money, oil and natural gas revenue, or impact aid revenue collected for debt service to the appropriate fund and use the money credited to the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received by the school district and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund. Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited in the school district's impact aid fund (Fund #26).

MCA 20-9-472

### **TAX CREDIT BONDS**

The following three types of bonds – Recovery Zone Bonds, Clean Renewable Energy Bonds, and Qualified Energy Conservation Bonds – are tax credit or direct subsidy bonds created under the Internal Revenue Code. Tax credit bonds provide the authority to issue bonds and sell tax credits to investors – they are not direct funding programs. With direct subsidy bonds, however, the issuer pays the investor a taxable interest coupon and receives a rebate from the U.S.

Treasury. Please see the following links for information related to these bonds:

<http://www.irs.gov/Tax-Exempt-Bonds/IRS-Releases-Guidance-on-ARRA-Bond-Provisions>

(2009 ARRA Provisions for tax credit bonds)

<https://energy.gov/eere/slsc/qualified-energy-conservation-bonds> (QECBs)

<https://www.energy.gov/eere/slsc/new-clean-renewable-energy-bonds> (CREBs)

[https://www.treasurydirect.gov/govt/rates/rates\\_irstcb.htm](https://www.treasurydirect.gov/govt/rates/rates_irstcb.htm) (IRS tax credit bond rates)

The U.S. Department of Energy website (above) indicates that CREBs & QECBs were originally structured as tax credit bonds. However, the March 2010 HIRE ACT (H.R. 2847 (Sec. 301)) changed some CREBs & QECBs from tax credit bonds to direct subsidy bonds similar to *Build America Bonds*\*\* (BABs).

\*\*Appendix 7, OMB Circular A-133 includes a listing of *ARRA-funded* programs that are *not* covered by the single audit requirements and are *not* required to be included in the Schedule of Expenditures of Federal Awards or in the determination of major programs. This list includes Build America Bonds. As such, it *appears* that other tax credit and direct subsidy bonds *may* similarly be excluded from single audit requirements.

**RECOVERY ZONE ECONOMIC DEVELOPMENT & FACILITY BONDS**

See <http://www.irs.gov/pub/irs-tege/rzbllocalreallocations.pdf> for an allocation of the authorized Recovery Zone bonds to Montana local governments.

Cities and counties are authorized to designate economic recovery zones and issue recovery zone economic development bonds and recovery zone facility bonds to finance the costs of recovery zone projects and facilities eligible under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA).

MCA 7-7-140(1)

The Montana Department of Administration ((Director's Office, Office of Finance and Budget) is responsible, in consultation with the Department of Commerce (Business Resource Division), for allocating the state's share of recovery zone economic development bonds and recovery zone facility bonds.

MCA 17-5-116, MCA 7-7-140(1)

The bonds must be authorized by the governing body of the city or county in accordance with the applicable provisions of Montana law:

- (a) if the bonds pledge the city's or county's credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;
- (b) if the bonds are payable from and secured solely by the revenue from a governmentally owned and operated facility or undertaking, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;
- (c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;
- (d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;
- (e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with provisions of Title 90, chapter 5, part 1.

MCA 7-7-140(2)

**CLEAN RENEWABLE ENERGY BONDS ("CREBs")**

For more information, see:

<https://www.cdfa.net/cdfa/cdfaweb.nsf/0/07C139CF31F69946882579360063E011>

Clean Renewable Energy Bonds ("CREBs") are tax credit bonds to finance certain renewable energy projects. Projects eligible for CREBs are identified in Section 45 of the IRC and include wind facilities, closed and open-loop biomass facilities, solar energy facilities, qualified hydro

facilities, small irrigation facilities, geothermal energy facilities, landfill gas facilities, trash combustion facilities and refined coal production facilities. These projects are intended to produce sufficient energy to provide for the local government's needs, allowing excess energy to be sold through the grid. The CREBs that local governments issue are payable from the revenues generated by the sale of the excess power and general fund revenue that would otherwise go to the purchase of electrical energy. "New CREBs" replaced "CREBS" in 2008.

Except as provided in MCA 90-4-1221, a governmental body may (a) issue revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, or extension of any project; (b) pledge to the punctual payment of its revenue bonds issued under this section and interest on the bonds all or a portion of the gross or net revenue of the project; and (c) create and maintain reasonable reserves.

MCA 90-4-1205

If the principal amount of clean renewable energy bonds, as limited by the Internal Revenue Code, is insufficient to finance all costs of a project as determined pursuant to MCA 90-4-1206, the governmental body may issue bonds to finance those costs and the costs of issuance of those bonds as (1) additional revenue bonds pursuant to 90-4-1205; (2) obligations under 7-7-4104; or (3) general obligations of a governmental body, provided that the issuance of the bonds are submitted to the electors of the governmental body as required by law.

MCA 90-4-1208

The Board of Investments (BOI) through its Clean Renewable Energy Bond Pooled Loan Program (CREBPLP) may issue CREBs on behalf of the local governments, under the Municipal Finance Consolidation Act.

### **QUALIFIED ENERGY CONSERVATION BONDS**

Cities and counties are authorized (subject to availability of an allocation) to issue qualified energy conservation bonds to finance projects for qualified energy conservation purposes and are authorized to undertake the qualified energy conservation purposes and programs within the meaning of the section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

MCA 7-7-141

The Montana Department of Administration (Director's Office, Office of Finance and Budget) is responsible for allocating the state's share of qualified energy conservation bonds as authorized in section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as amended by ARRA.

MCA 17-5-116

Qualified energy conservation bonds meet the definition of "tax credit bonds" in 17-5-117. Any bond issued as a tax credit bond may be issued and sold at public or private sale, may be payable and mature as to principal and interest, if any, on any date or dates, may be subject to redemption in whole or in part as determined by the governing body of the issuer, and may have other terms and conditions that the issuer considers to be necessary and appropriate. The governing body of

the issuer of any tax credit bond is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bond, including investment of funds and accounts to repay the bond.

MCA 17-5-117

The bonds must be authorized by the governing body of the city or county in accordance with the provisions of applicable Montana law, except as otherwise provided in 17-5-117 (see above).

The governing body is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bonds, subject to the following limitations:

- (a) if the bonds pledge the city's or county's credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;
- (b) if the bonds are payable from and secured solely by the revenue derived or generated from a qualified energy conservation program or project, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;
- (c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;
- (d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;
- (e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with provisions of Title 90, chapter 5, part 1.

MCA 7-7-141(2)





**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**MEETINGS**

REVISION JANUARY 2022

REF: CO09

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## REGULAR MEETING DATES

The board of county commissioners shall establish by resolution a regular meeting date and notify the public of that date. The board may, by resolution and having provided at least 2 days' posted public notice, designate another meeting time or place.

MCA 7-5-2122

## MEETINGS OPEN TO PUBLIC

All meetings of governmental bodies, boards, bureaus, commissions or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

MCA 2-3-203, MCA 7-5-2125

Meetings may be closed for the following reasons:

- (1) to discuss a matter of individual privacy, if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. **Note:** The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.
- (2) to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency. A meeting may not be closed if the only parties are public bodies or associations.

MCA 2-3-203

### **Attorney General Opinions and Supreme Court Cases related to open meeting laws:**

A regularly scheduled meeting between the board of county commissioners and its staff is a meeting within the terms of the open meetings law.

AGO #38, Vol. 41

The deliberations of a county tax appeal board must be open to the public unless the presiding officer determines that the discussion relates to a matter of individual privacy that clearly exceeds the merit of public disclosure.

AGO #61, Vol. 42

“Agencies” are required to have open meetings, and the definition of “agencies” does not include individual employees. As such, a meeting between the city engineer, the public works director, and representatives of a private construction company is not considered to be an agency meeting subject to the open meeting laws.

Supreme Court case SJL of Mont. Associates Ltd. Partnership v. Billings, (1993)

## QUORUM

"Meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to

hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

MCA 2-3-202

A majority of the commissioners constitutes a quorum for the transaction of business.

MCA 7-2-2242

The presence of a quorum of members of the board at an event or meeting of another entity or organization or traveling in the same vehicle does not constitute a meeting of the board as long as no issues over which the commission has supervision, control, jurisdiction, or advisory power are discussed or heard. County business may only be conducted during a meeting as defined in 2-3-202 for which notice has been properly given. If a quorum of commissioners is present at an event or meeting or is traveling in the same vehicle when it was not possible to provide public notice under 7-1-2123 and issues over which the commission has supervision, control, jurisdiction, or advisory power are discussed or heard, the commissioners present shall provide a report at the commission's next regularly scheduled public meeting.

MCA 7-5-2122(4) to (5)

Where two of three County Commissioners discussed by telephone the approval of a preliminary plat of a subdivision, a "meeting" as defined in MCA 2-3-202 took place, and the Commissioners were subject to the requirement that notice of the meeting be given in accordance with statute. Supreme Court Bd. of Trustees v. County Comm'rs, (1980)

## **PUBLIC PARTICIPATION**

Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

MCA 2-3-103

Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

MCA 2-3-111

The provisions of 2-3-103 and 2-3-111 (above) do not apply to:

- (1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;
- (2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
- (3) a decision involving no more than a ministerial act.

MCA 2-3-112

A County Commission that established the hours of 9:30 a.m. to 5 p.m., Monday through Friday, as its regular meeting time for public notice purposes, did not comply with Montana's constitutional and statutory public participation provisions.

AGO #13, Vol. 47 & AGO #51, Vol. 42

An agency shall be considered to have complied with the notice provisions of 2-3-103 (above) if:

- (1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;
- (2) a proceeding is held as required by the Montana Administrative Procedure Act;
- (3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or
- (4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

MCA 2-3-104

**Agenda:** The agenda for a meeting must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter.

MCA 2-3-103

Only an item that is not of significant public interest or that is otherwise exempt from public participation requirements may be added to a City Council agenda and acted upon at the same City Council meeting.

AGO #12, Vol. 51

## **MINUTES OF MEETINGS**

The board of county commissioners shall cause to be kept a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings. The minutes of all meetings must be signed by the presiding officer and the clerk (clerk and recorder), and, except as noted below, must be kept at the office of the clerk and must be open for public inspection free of charge.

MCA 7-5-2129 to 2131

Electronic records accessible from the office of the clerk may be stored at a separate location as long as those records are available for public inspection free of charge.

MCA 7-5-2131(2)

### **Access to public information -- safety and security exceptions.**

- (1) Except as provided in subsections (2), every person has a right to examine and obtain a copy of any public information of this state.

- (2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

MCA 2-6-1003

### **Minutes**

- (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).
- (2) Such minutes shall include without limitation:
  - (a) date, time, and place of meeting;
  - (b) a list of the individual members of the public body, agency, or organization in attendance;
  - (c) the substance of all matters proposed, discussed, or decided; and
  - (d) at the request of any member, a record by individual members of any votes taken.
- (3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.
- (4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

MCA 2-3-212

**Public Comment:** Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

MCA 2-3-103

**Resolutions:** After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

MCA 7-5-121(5)

**Members' Votes:** The minutes of the meetings of the board of county commissioners must include a record of the individual members' votes when there is a request by a member and when there is a division on a question.

MCA 7-4-2611(2)(d), MCA 2-3-212

**Information to be Included:** In addition to the above requirements, the minutes should include the following types of information:

**Note:** The following list is not all-inclusive. We have attempted to identify items that reference minute entry in State law. The main compliance requirement, as noted above, is that the minutes must contain the substance of all matters proposed, discussed, or decided, without limitation. Various items listed below must be approved by resolution, and all resolutions must be entered in the minutes, as noted above.

- (a) date, time, and place of meeting; (MCA 2-3-212)
- (b) a list of the individual members of the public body, agency, or organization in attendance; (MCA 2-3-212)
- (c) calls for bid, advertisements and accepting bids; (MCA 7-5-2301, MCA 15-70-101(5))
- (d) contracts or loans approved; (MCA 2-3-212)
- (e) setting of salaries; (MCA 7-4-2504)
- (f) reports to the governing body; (MCA 2-3-212)
- (g) cancellation of warrants and checks; (MCA 7-6-2607)
- (h) approval of investments; (MCA 2-3-212)
- (i) acceptance and approval of pledged securities; (MCA 7-6-207(2))
- (j) cash or budget transfers; (MCA 7-6-4006 & 4031)
- (k) appropriation of state and federal money; (MCA 7-6-4006)
- (l) sales of real or personal property; (MCA 7-8-2212 & 2214)
- (m) transferring property between governmental entities; (MCA 7-8-101)
- (n) adoption of budget and setting of tax levies; (MCA 7-6-4030 & 4034)
- (o) emergency budget resolutions; (MCA 7-6-4032)
- (p) setting rates of interest on registered warrants; (MCA 7-6-2604)
- (q) claim and warrant approval; (MCA 7-6-2202, MCA 7-5-2129)
- (r) closing of inactive accounts; (MCA 7-6-614)
- (s) interlocal agreements between public agencies; (MCA 7-11-104)
- (t) order for consolidation of offices; (MCA 7-4-2310)
- (u) roads opened, established, constructed, changed, abandoned, or discontinued; (MCA 7-14-2602 & 2603, MCA 7-5-2129)
- (v) leases entered into to operate regional detention facilities; (MCA 53-30-511)
- (w) abandonment and consolidation of counties (MCA 7-2-2701)
- (x) exemptions from bidding or advertising requirements for certain contracts when an emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency has occurred. (MCA 7-5-4303)
- (y) the creation of a public library (MCA 22-1-303)
- (z) the creation of a county water and/or sewer district (MCA 7-13-2214)
- (aa) the cancellation of real and personal property taxes (MCA 15-16-702)
- (bb) the creation and dissolution of special districts (MCA 7-11-1013 & 1029)
- (cc) sale and issuance of bonds or other long-term indebtedness (MCA Title 7, Chapter 7)
- (dd) cancellation of delinquent property taxes on a mobile home or house trailer being moved for the purposes of destruction or recycling (MCA 15-24-212)



# COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES

## PROPERTY TAX

REVISION JANUARY 2022

REF: CO10

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### **See Also:**

CO02 – Budgets for compliance requirements relating to property tax levy limitations and procedures for calculating levies, as well as the fixing of tax levies for budgetary purposes.

CO11 – Rural Special Improvement Districts for compliance requirements relating to rural special improvement districts.

CO15 – Tax Sales, Redemptions, and Tax Deed for compliance requirements relating to tax sales, redemptions, and tax deed.

## **TAX NOTICE & PUBLICATION**

Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying the tax payment due dates, the penalties to be assessed on delinquent taxes, and the time and place at which payment of taxes may be made.

MCA 15-16-101(1)

The notice must be given as provided in 7-1-2121.

MCA 15-16-101(4)

Tax notices mailed to each taxpayer should include the following:

- a. the amount of taxes and assessments owed for the current year,
- b. the amount of taxes and assessments due and delinquent for other years,
- c. the taxable value of the property,
- d. the total mill levy applied to that taxable property,
- e. itemized city services and special improvement district assessments collected by the county,
- f. the number of the school district in which the property is located,
- g. the amount of the total tax due Effective October 1, 2021: itemized by mill levy that is levied as city tax, county tax, state tax, school district tax, and other tax,
- h. Effective October 1, 2021: an indication of which mill levies are voted levies, including voted levies to impose a new mill levy, to increase a mill levy that is required to be submitted to the electors, or to exceed the mill levy limit provided for in 15-10-420, and
- i. a notice of the availability of all the property tax assistance programs available to property taxpayers, including the property tax assistance program under Title 15, chapter 6, part 3 and the residential property tax credit for the elderly under 15-30-2337 through 15-30-2341.
- j. If a tax lien is attached to the property, the notice must also include, in a manner calculated to draw attention, a statement that a tax lien is attached to the property, that failure to respond will result in loss of property, and that the taxpayer may contact the county treasurer for complete information.

MCA 15-16-101(2)

The tax notice mailed to each taxpayer should also include notification of the \$5 minimum tax requirement, if applicable.

MCA 15-16-118(2)

## **TAX PAYMENT DUE DATES**

All taxes levied and assessed (except assessments made for special improvements in cities and towns) are payable as follows:

- a. One-half payable on or before November 30 or within 30 days after the tax notice is postmarked, whichever is later; and
- b. One-half payable on or before May 31.

MCA 15-16-102(1)



If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day.

MCA 15-16-102(4)

If taxes on property qualifying under the property tax assistance program provided for in 15-6-305 are paid within 20 calendar days, the taxes may be paid without penalty or interest.

MCA 15-16-102(4)

**Postmark Date of Payment:** Tax payments deposited in the U S mail on or before payment deadlines above, as shown by the postmark on the envelope received by the Treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the County Treasurer.

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**Suspension of Property Taxes for Persons in Military Service:** All taxes, whether on real or personal property, due on property owned by a resident of Montana in the military service, while serving outside of Montana must be suspended. Proceedings may not be taken for the collection of the taxes and penalties or interest may not accrue until 1 year after the cessation of hostilities or 1 year after the taxpayer is released from active duty. If the taxpayer was wounded, injured, or suffered a disease while serving in a combat zone or participating in a contingency operation that is serious enough to require hospitalization, proceedings may not be taken and penalties or interest may not accrue until 1 year after the taxpayer's release from the hospitalization.

MCA 10-1-606(1)

To obtain these benefits the qualified taxpayer (or co-owner or representative) shall file with the county treasurer an affidavit stating that the person against whom the taxes are imposed is in military service. The affidavit must be filed on or before the time that taxes would become delinquent.

MCA 10-1-606(2)

## **TAXATION OF PERSONAL PROPERTY**

To compute the taxes due on the personal property, the department shall use the appropriate mills levied during the previous year.

MCA 15-16-119(1)

The county treasurer shall notify the taxpayer of the amount and due date of the tax. The tax is due and payable 30 days from the date the treasurer mails the notice. Taxes not paid within 30 days become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

MCA 15-16-119(2)

## **MOBILE HOMES, MANUFACTURED HOMES, & HOUSETRAILERS**

Taxes on mobile homes, manufactured homes, and housetrailers not taxed as an improvement (taxed as personal property) are due as follows: (a) the first payment is due on or before May 31 or within 30 days from the date of the tax notice, whichever is later, and (b) the second payment is due no later than November 30 of the year in which the property is assessed.

MCA 15-24-202(1)

If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

MCA 15-24-202(1)(d)

A treasurer shall issue a tax-paid sticker to the owner of a mobile home, manufactured home, or house trailer that is to be moved and on which all taxes, interest, and penalties have been paid in full unless the exceptions in 15-24-206(3), 15-24-209, or 15-24-212 apply. On the movement of a mobile home, manufactured home, or house trailer in violation of this part, the county treasurer for the county where the mobile home, manufactured home, or house trailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or \$50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty.

MCA 15-24-202(4) & (6)

The board of county commissioners may order the cancellation of delinquent property taxes on a mobile home or house trailer if the mobile home or house trailer is to be moved for the purposes of destruction or recycling.

There is an exemption from taxation for a mobile home, manufactured home, or house trailer:

- (a) that was manufactured 28 or more years prior to the current date;
- (b) for which the most recent assessed value is \$10,000 or less; and
- (c) that is not determined to be an improvement to real property, as provided in 15-1-101.

An owner of three or more mobile homes, manufactured homes, or housetrailers may receive an exemption under this section for the two units with the lowest appraised values.

MCA 15-6-241(1)(3)

There is a property tax exemption for movable housing that is uninhabited because it is no longer fit for human habitation. To be eligible for the exemption, an applicant must meet the requirements of this section. This section does not apply to movable housing that receives an abatement for a natural disaster as provided in 15-16-611.

MCA 15-6-242

## **MINIMUM TAX**

If the taxes and special assessments due for the current year are less than \$5, the county treasurer shall notify the taxpayer that a minimum tax of \$5 is imposed and due. The \$5 tax is imposed for purposes of defraying administrative expenses incurred in administering the tax, and the difference between the taxes and special assessments and the minimum tax of \$5 is to be deposited in the county general fund.

MCA 15-16-118(1)

**Note:** This minimum tax is applicable to both real and personal property taxes.

## **CORRECTION OF DEFECTS IN PROPERTY TAX RECORD**

Any time after the original assessment or prior to a sale for delinquent taxes, omissions, errors or defects in the property record may only be corrected by the Department of Revenue. If the correction involves an assessment of property that is the subject of pending litigation with a taxing jurisdiction within the county, the county attorney must be notified of the correction.

MCA 15-8-707

If the Department of Revenue revises an assessment that results in an additional tax of \$5 or less, an additional tax is not owed and a new tax bill does not need to be prepared.

MCA 15-16-101(5) & 102(7)

## **RECEIPT OF PAYMENT**

The county treasurer shall give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed. If, however, the payment is received through the mail or by electronic means, the treasurer shall issue a receipt only on request of the person paying the tax.

MCA 15-16-104

## **INTEREST & PENALTY FOR DELINQUENCIES**

Interest on delinquent real and personal property taxes must be charged at the rate of 5/6 of 1% a month from and after the delinquency until paid. A 2% penalty must also be added to the delinquent taxes.

MCA 15-16-102(2) & (3)

**Exception – Assessments:** The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

MCA 15-16-102(6) & 103

**Exception – Persons in Military Service:** See requirement, above, for exception for property owners in military service who are serving outside of Montana or who are hospitalized.

### **PARTIAL PAYMENT OF DELINQUENT TAXES**

A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, if taxes currently due for the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

MCA 15-16-102(5)(a)

A payment by a co-owner of an undivided ownership interest that is subject to a separate assessment otherwise meeting the above requirement is not a partial payment.

MCA 15-16-102(5)(b)

The county treasurer may accept a partial payment of centrally assessed property taxes as provided in 76-3-207.

MCA 15-16-102(8)

### **CANCELLATION OF DELINQUENT PROPERTY TAXES**

**Personal Property Taxes:** The county treasurer shall prepare and submit to the county commissioners on or before the first Monday of June a list of personal property taxes that are not a lien on real estate that have been delinquent for 5 years or more. The list must show the name and address of the delinquent taxpayer; the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and the date the taxes became delinquent. The list may not include personal property taxes that remain uncollected due to bankruptcy or other litigation.

MCA 15-16-701(1)

**Real Property Taxes:** At the same time that the delinquent personal property tax list (above) is prepared, the county treasurer may prepare and submit to the county commissioners a list of the real property taxes that have been delinquent for 5 years or more. To be included on the list, the county treasurer must have attached a tax lien to each property as provided in chapter 17, at least 3 years before preparation of the list. If prepared, the list must show the name and address of the delinquent taxpayer; the amount of the delinquent taxes, plus interest, penalties, and costs, if any; the real property identification number; the legal description of the property; the date the taxes became delinquent; and the date of the last tax lien sale on the property. The list may not include real property taxes that remain uncollected because of bankruptcy or litigation.

MCA 15-16-701(2)

The board of county commissioners may enter an order that permanently and prospectively cancels real property taxes on parcels identified as being solely used for road purposes and that otherwise meet the requirements of MCA 15-16-701.

MCA 15-16-701(3)

Within 30 days of receiving any list prepared under 15-16-701 (above), the board of county commissioners shall examine the list, make any necessary corrections, and make its order canceling all personal and real property taxes contained in the list or lists. The commissioners' order must be included in the board's minutes. Copies of the list must be filed with the county clerk and recorder and county treasurer.

MCA 15-16-702

Upon notification of the order for cancellation, the county clerk and recorder and county treasurer shall adjust their taxes-receivable accounts to conform to the order of cancellation.

MCA 15-16-703

## **CITY OR TOWN TAXES & SPECIAL ASSESSMENTS**

**See Also CT10 Cities and Towns – Property Taxes and CT11 – Cities and Towns – Special Improvement Districts (SID's)**

Except in the case of cities of the first, second, and third classes that provide by ordinance for the city treasurer to collect the taxes from the corrected property tax record, the county treasurer of each county shall collect the tax levied by all cities and towns in the respective county. The county treasurer shall collect the city or town taxes at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

MCA 7-6-4413

If the assessments are not paid on or before said dates, the same shall be subject to the same interest and penalties for nonpayment as delinquent property taxes under 15-16-102.

MCA 7-12-4188(2)

**Note:** All bond issues dated prior to March 20, 1979, and many issues dated from March 20, 1979, through April 30, 1985, were set up with a single annual payment of principal and interest. The time of the payment was established based on a single November assessment payment. Therefore, for certain S.I.D. debt service funds, the assessments may still be collected entirely in November because of the required time for the principal and interest payment. There should be very few of these, if any, left outstanding.

**Collections by County Treasurer:** In each city or town where taxes are certified to and collected by the county treasurer, it is the duty of the city treasurer or town clerk to certify to the department of revenue, at the same time that the annual levy for general taxes is certified by the city or town clerk to the county clerk, all special assessments assessed. The department of revenue shall enter the special assessments upon the property tax record for the county. The

county treasurer shall collect all assessments in the same manner and at the same time as taxes are collected.

MCA 7-12-4181 & 4188, MCA 15-16-103

**Collections by City Treasurer - Ordinance:** In any city or town where taxes are certified to and collected by the county treasurer, the city or town may provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed.

MCA 7-12-4183(1)

**Delinquent Assessments:** Delinquent special assessments must be certified to the county clerk. The county treasurer shall collect the delinquent special assessments and taxes in the same manner and at the same time that taxes are collected. In case the delinquent assessments are not paid, the whole property must be sold in the same manner that other property is sold for taxes.

MCA 7-12-4183(2)(b)

**Option – City to Collect Delinquencies:** All cities which by ordinance provide for the collection of city taxes and assessments are hereby authorized and empowered to solicit payment, ask for, receive, and receipt for delinquent taxes and assessments due any such city. Upon receipt of payment for delinquent taxes and assessments by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify the fact of such payment to the county treasurer. This provision is not intended to prevent the county treasurer from collecting such delinquent taxes or assessments, but is intended as an aid to the collector of such delinquent taxes and assessments.

MCA 7-6-4422

In a city or town that collects its own delinquent taxes or special assessments, a tax lien sale may not be held by the city or town unless the city treasurer or town clerk, within 10 working days after the date on which the taxes or assessments become delinquent, certifies the delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated. Upon receipt of the certificate, the county treasurer shall enter the delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes shall include all city and town delinquent taxes and assessments.

MCA 7-6-4423

## **REMITTANCE OF MONEY TO MUNICIPALITIES**

As provided in MCA 7-6-4413, above, the county treasurer must collect taxes for a city or town which has not by ordinance placed the duty of collection upon its own treasurer. No provision is made in that section as to when the money so collected must be turned over to the city or town treasurer. The county treasurer must, within a reasonable time after collection, compute the amount due the city or town and pay it over to the proper custodian. The lapse of 1 month after collection of the bulk of the city or town taxes is not a reasonable time within which to perform that duty.

Supreme Court Case State ex rel. Cut Bank v. McNamer, (1922)

When remitting taxes to a city, a county treasurer must break out the amount received from taxpayers as payment for the city's special improvement district assessments.

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Unless a statute provides otherwise, interest, penalties, and costs collected on delinquent taxes follow the tax. Therefore, local government entities authorized to levy taxes are entitled to a pro rata share of the penalties collected on delinquent property taxes by the county treasurer.

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## **REMITTANCE OF MONEY TO STATE**

Except as noted below, the county treasurer, between the 1st and 20th days of each month, shall remit to the Department of Revenue all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the Department prescribes (“County Collection Report to the Department of Revenue”). The department may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

MCA 15-1-504(1)

**June Remittance:** By June 20 of each year, the county treasurer shall remit to the Department of Revenue an estimate of all money belonging to the state that was collected by June 15, in addition to the amount collected during the preceding month. By July 15, the county treasurer shall remit all money belonging to the state that was collected during the remainder of June.

MCA 15-1-504(2)

**Motor Vehicle Collections:** The county treasurer shall remit to the Department of Justice by the 20th of each month all state money that was collected by the county treasurer due to motor vehicle, vessel, and snowmobile transactions during the preceding month. The remittance must be accompanied by a detailed report upon a form prescribed by the Department of Justice. The department may assess counties an interest charge, at the rate of 10% a year, on all money that is not remitted by the prescribed time.

MCA 15-1-504(3)

## **PROTESTED TAXES**

The person upon whom a property tax or fee is being imposed may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must: (a) be made to the officer designated and authorized to collect it; (b) specify the grounds of protest; and (c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under MCA 15-7-111.

MCA 15-1-402(1)

All property taxes and fees paid under protest must be deposited to a special protested tax fund (BARS custodial fund #7130) and must be retained in the protested tax fund until final determination of any action or suit to recover the taxes and fees, unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to the provisions of MCA 15-1-402(5) (below).

MCA 15-1-402(4)

**Note:** See this MCA section for exceptions for centrally assessed property, and school districts that elect to waive rights to protested taxes in a specific year.

The governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except for the first-year protest amount.

MCA 15-1-402(5)(a)

**Exception – Centrally Assessed or Industrial Property:** The governing body of a taxing jurisdiction affected by the payment of taxes under protest, on property that is centrally assessed pursuant to 15-23-101 or on industrial property that is assessed annually in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

MCA 15-1-402(5)(b)

**Exception – School District Waiving Right** – the provisions of subsection (5)(b) (see above) above do not apply to a school district that has elected to waive its right to its portion of protested taxes on centrally assessed property and on industrial property that is assessed annually for that specific year as provided in 15-1-409.

MCA 15-1-402(5)(c)

**Action Determined in Favor of Government:** If the protested action is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

MCA 15-1-402(6)(a)

**Action Determined in Favor of Protestor:** If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity



levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The Department of Revenue shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the amount available for the refund in the school district property tax protest state special revenue fund is insufficient to refund the property tax payments, the Department shall pay the remainder of the refund from the state general fund. The taxing jurisdiction shall pay interest at the rate of interest earned by STIP for the applicable period.

MCA 15-1-402(6)(b)

If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

MCA 15-1-402(6)(c)

If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b) (above).

MCA 15-1-402(6)(d)(ii)

If, after a final determination by the Montana tax appeal board or a court or after settlement of an appeal, the final assessed value of a property that is centrally assessed under 15-23-101 or an industrial property that is annually assessed by the department is less than 75% of the department's original assessed value, the governing body may demand that the state refund from the general fund the protested taxes equivalent to the difference between the final determined assessed value and 75% of the original assessed value.

MCA 15-1-402(6)(d)(i)

**Note:** See this MCA section for procedures related to centrally assessed property

In satisfying the requirements of subsection (6)(d) (above), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

MCA 15-1-402(6)(e)

A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources: (a) imposition of a property tax to be collected by a special tax protest refund levy; (b) the general fund or any other funds legally available to the governing body; and (c) proceeds from the sale of bonds. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

MCA 15-1-402(7)

**School District Waiving Right to Receive Protested Taxes:** A school district that has centrally assessed property subject to pending property tax protests shall, prior to February 1 of each year, elect whether to waive the school district's right to receive its portion of protested taxes under 15-1-402(5)(b) (see above) for the previous year. If the school district elects to waive its right to its portion of the protested taxes, the district's guaranteed tax base aid calculated under 20-9-366 must be determined based on the total taxable value of property in the school district less the taxable value of the centrally assessed property for which a school district waived its right to receive its portion of protested taxes. Upon settlement or other resolution of the protest, the Department of Revenue is responsible for refunding protested taxes or paying any other costs due the protesting taxpayer and retaining any portion of protested taxes that would have been distributed to the school district for each year the school district has elected to waive receiving its portion of the protested taxes.

MCA 15-1-409

### **TAX PREPAYMENT – NEW INDUSTRIAL FACILITY**

A person receiving permission to construct or locate a major new industrial facility shall, upon request of the county commissioners of the county in which the facility is to be located, prepay an amount equal to three times the estimated property tax due the year the facility is completed.

MCA 15-16-201

The person shall not be obligated to prepay the entire amount at one time but, upon request of the county commissioners, shall prepay only that amount shown to be needed from time to time. To assure this payment, the person shall guarantee to the county commissioners and also have a bank guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

MCA 15-16-201



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**RURAL SPECIAL IMPROVEMENT  
DISTRICTS (RSID)**

REVISION JANUARY 2022

REF: CO11

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## **CREATION OF RURAL SPECIAL IMPROVEMENT DISTRICT (RSID)**

Whenever the public interest or convenience may require, the board of county commissioners may order and create special improvement districts outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase one or more of the improvements of the kind described in 7-12-4102\*\*, in or for the benefit of the special improvement district.

MCA 7-12-2102(1)

\*\* pertains to *municipal* special improvement districts.

**Petition:** (a) Except as provided in subsection (2)(b) the board of county commissioners may order and create a special improvement district upon the receipt of a petition to create a special improvement district that contains the consent of all of the owners of property to be included in the district.

(b) The board of county commissioners may order and create a special improvement district solely for the purpose of road maintenance upon the receipt of a petition to create the district that contains the consent of the owners of more than 85% of the area of the property proposed in the petition to be included in the district. The property proposed to be included in the district must be located in a residential subdivision, except that the owner of property located outside of a residential subdivision may consent to the inclusion of the property in the proposed district.

MCA 7-12-2102(2)

**Inclusion of City Property:** The board of county commissioners may create RSID's covering projects abutting the city limits and include properties inside the city where the RSID abuts and benefits that property, provided that city property owners of 40% or more of the proposed assessments don't protest the creation of the RSID. A joint resolution of the city and county must be passed agreeing to the terms of the RSID prior to passing the resolution of intention or resolution creating the RSID. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.

MCA 7-12-2102(3)

**Resolution of Intention:** Before creating a RSID, the board of county commissioners shall pass a resolution of intention. The resolution must (a) designate the number of the district; (b) describe the boundaries of the district; (c) state the general character of the improvements to be made; (d) designate the engineer and an approximate estimate of the cost of the work; (e) specify the method by which the costs of the improvements will be assessed against property in the district; and (f) if the method of assessment is that described in 7-12-2151(1)(d) (i.e., Equal Amount option – see below), specify that if an increase occurs in the number of benefited lots, tracts, or parcels within the district during the term of the bonded indebtedness, the assessment will be recalculated as provided in 7-12-2151(4).

MCA 7-12-2103

Upon passage of a resolution of intention, the board of county commissioners shall publish notice of the passage, as provided in 7-1-2121. See MCA 7-12-2105(3)(a) for a listing of item to be included in the notice. If the revolving fund is to be pledged to secure the payment of bonds

and warrants, the notice must include a statement that (i) the county general fund may be used to provide loans to the revolving fund; or (ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

MCA 7-12-2105

**Note:** The provisions of this section do not apply to a resolution of intention to create a RSID that is passed upon receipt of a petition, per 7-12-2102(2), above.

**Resolution Creating District:** The board of county commissioners shall pass a resolution creating the special improvement district when (a) sufficient protests have not been delivered within 30 days of the first notice of the resolution of intention; (b) a protest has been found by the board to be insufficient or has been overruled; (c) a protest against extending the proposed district has been heard and denied; or (d) a resolution creating the district is passed upon receipt of a petition as provided in 7-12-2102(2)(a).

MCA 7-12-2113

**County Attorney:** Except for legal work required by the board of county commissioners in connection with the creation of a rural improvement district, it is not the duty of a county attorney to represent RSID's. After a RSID has been created, a part-time county attorney may represent a RSID in his private practice and receive payment for such legal representation. AGO #27, Vol. 40

## **COSTS/EXPENSES**

The engineer selected shall keep an account of all costs and expenses incurred in connection with each RSID and shall certify the costs and expenses to the county clerk.

MCA 7-12-2117

**Incidental Expenses:** All demands for incidental expenses, except for the administrative fee of the county and interest payable on warrants or bonds of the district, shall be presented to the county clerk by itemized bill. Incidental expenses include:

- (a) the compensation of the engineer for work done;
- (b) the cost of printing and advertising;
- (c) interest on warrants of the county issued to pay costs of improvements;
- (d) bond issuance costs;
- (e) a reasonable administrative fee payable to the county for the creation and administration of the district by the county, its officers, and its employees;
- (f) the cost of preparation of plans, specifications, maps, or plats;
- (g) engineering, superintendence, and inspection; and
- (h) preparation of assessment rolls.

MCA 7-12-2119, 2101(7), & 2153(1)

**Items to be Included in the Original Costs:**

**Revolving Fund:** If the bonds or warrants are secured by a revolving fund, the original costs of any improvement must include an amount of at least 5% and not more than 10% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund.  
MCA 7-12-2153(2)

**District Reserve Account:** As part of the original costs of the improvements, the board of county commissioners may include an amount not to exceed 5% of the principal amount of any rural improvement district bonds or warrants issued. This amount is in addition to the amount, if any, specified above when bonds or warrants are secured by a revolving fund. The amount must be deposited in a district reserve account created and maintained in the district fund.  
MCA 7-12-2153(3)(b)

## **BIDDING FOR IMPROVEMENTS**

A notice inviting proposals and referring to specifications on file with the engineer selected must be published as provided in 7-1-2121 (See CO01-General Topics). The board of county commissioners may call for bids for proposals for several types of materials for any of the improvements proposed, reserving the right to select the type of materials to be used in making any of the improvements after the bids or proposals have been opened, examined, and declared.  
MCA 7-12-2131 & 2132

If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may enter into a contract for the purchase of said improvement without advertising for bids or proposals; provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by 7-12-2105. See Resolution of Intention, above.  
MCA 7-12-2133

**Decision to Award:** The board of county commissioners may award the contract for the work or improvement to the lowest responsible bidder at the prices named in the bid and shall reject all proposals other than the lowest regular proposal or bid of a responsible bidder. The board may reject any proposals or bids if it considers this for the public good and may also reject the bid of a party who has been delinquent or unfaithful in a former contract with the board.  
MCA 7-12-2135

**Bid Security:** All proposals or bids offered must be accompanied by bid security. Bid securities accompanying rejected bids shall be returned to the proper parties. The bid security accompanying the accepted proposal or bid must be held by the county clerk until the contract for doing the work has been entered into, either by the lowest bidder or by the owners of over 50% of frontage, at which time the bid security must be returned to the bidder. If the bidder fails, neglects, or refuses to enter into the contract to perform the work and improvements, then the bid security accompanying the bid must be declared to be forfeited to the board and must be collected by the board and paid into the general fund of the county.  
MCA 7-12-2131 & 2137

**Contract Performance Security:** All contractors and contracting owners included shall, at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, in the form and manner provided for in Title 18, Chapter 2, Part 2, MCA.  
MCA 7-12-2138

## **ASSESSMENT OF COSTS**

To defray the costs of an RSID, including incidental expenses, the board of county commissioners shall assess the entire cost of the improvements against benefited lots, tracts, or parcels in the district, based upon the benefits received, and shall adopt one or any combination of the following methods of assessments:  
MCA 7-12-2151

- (a) Area option - Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all benefited lots, tracts, or parcels in the district, exclusive of streets, avenues, alleys, and public places. The assessable area may be less than but may not exceed the actual area of the lot, tract or parcel.  
MCA 7-12-2151(1)(a)
- (b) Assessed Valuation option - Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited lots or pieces of land within the district, if the board determines the assessment to be equitable in proportion to and not exceeding the benefits received from the improvements by the lot, tract, or parcel.  
MCA 7-12-2151(1)(b)
- (c) Frontage option - Each lot, tract, or parcel of land in the district abutting upon the street where the improvement has been made may be assessed in proportion to its lineal feet abutting the street.  
MCA 7-12-2151(1)(c)
- (d) Equal Amount option - Each lot, tract, or parcel of land in the district may be assessed an equal amount based on the total cost of the improvement.  
MCA 7-12-2151(1)(d)

If the assessment method is that provided in (d) above (Equal Amount option), and an increase occurs in the number of benefited lots, tracts, or parcels within the district during the term of bonded indebtedness, the board shall recalculate the amount assessable to each lot, tract or parcel. The board shall comply with the provisions of 7-12-2158 through 7-12-2160 in adopting the recalculated amount.  
MCA 7-12-2151(4)

- (e) Utility Service Connections option - Each lot, tract, or parcel of land in the district served by a utility connection may be assessed an equitable lump sum for the connection based on the bid price in the applicable contract.  
MCA 7-12-2151(1)(e)

The board in its discretion may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds that are available to it for that purpose or to include the whole or any part of the costs within the amount of the assessment to be paid by the benefited property. MCA 7-12-2151(3)

In order to apportion the cost of any of the improvements between the corner lots and inside lots of any block, the board of county commissioners may, in the resolution creating any improvement district, provide that whenever any of the improvements shall be along any side street or abutting upon the side of any corner lot or block, the amount of the assessment against the property shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear. MCA 7-12-2155

**Federal Property Exemption:** Whenever any property belonging to the United States is to be included within the, the board shall in the resolution of intention declare that said property shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund. MCA 7-12-2157

**Resolution for Assessment:** The board of county commissioners shall by resolution levy and assess a tax upon all benefited property in the RSID to defray the cost of improvements. The method or methods described above used for the basis of assessment shall be described in the resolution. A notice of this resolution shall be published as provided in 7-1-2121 (See CO01, General Topics) and mailed to each property owner in the district, and shall state the time at and place in which objections to the final adoption of the resolution will be heard. MCA 7-12-2158 & 2159

## **MAINTENANCE OF IMPROVEMENTS**

See requirements below for specific provisions related to **Lighting Maintenance Districts**.

The board of county commissioners shall estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or another time as may appear necessary. Before the first Monday in September of each year, the board may adopt a resolution levying and assessing all property within the district. In lieu of an assessment, the board shall otherwise provide for the whole cost of maintaining, preserving, or repairing the district improvements. The resolution must be prepared and certified to in substantially the same manner as a resolution levying assessments for making, constructing, and installing the improvements in the special improvement district. MCA 7-12-2161(1), (2) & (3)



If a rural special improvement district is created to improve a county road established by the county road petition process, the district is responsible for the costs of maintenance and repair of the road.

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**Boundary Changes:** The board may change by resolution, not more than once a year, the boundaries of any maintenance district.

MCA 7-12-2161(4)

A sewer district constituting a rural special improvement district could be significantly expanded and the district's service area doubled in size only by the creation of a new special improvement district. The provisions of 7-12-2161(4) contemplate only maintenance of an existing system for which notice has previously been given and upon which a hearing has been previously held. A substantial addition to an existing district with notice or comment by the affected property owners would conflict with the notice procedures applicable to property owners not yet taxed for the improvement of their property.

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**Administration Costs Included in Maintenance Assessment:** The board shall include in the estimated cost of maintaining the district the lesser of \$500 or 5% of the annual assessment of the district. The amount determined is to defray the costs incurred by the county in administering the maintenance district. The board shall annually pay the amount determined under this subsection to the county treasurer for deposit in the county general fund.

MCA 7-12-2161(5)

**Improvement District Maintenance Fund:** The money collected from the assessment provided for in 7-12-2161 (above) shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated. Such fund shall be used to defray the expense of maintenance, preservation, or repair of said improvements and for no other purpose.

MCA 7-12-2162

**Example of Maintenance Distinguished from Reconstruction** -- Yellowstone County replaced a 4-inch water main serving a rural special improvement district with a 12-inch main and assessed costs as "maintenance" costs against the property owners in the district. The court determined that the replacement costs were "reconstruction" costs as set forth in 7-12-4102, rather than "maintenance" costs under 7-12-2120 or this section, and must be funded by creating a special improvement district under 7-12-2102 after notice and opportunity to object as provided in 7-12-2105 and 7-12-2109, respectively.

Supreme Court Case Miller v. Yellowstone County (1988)

## **COLLECTION OF ASSESSMENTS**

When a resolution of assessment, either for construction or maintenance, has been certified by the county clerk, the county treasurer shall collect the assessment in the same manner and at the same time as taxes for general and municipal purposes are collected.

MCA 7-12-2163(1)

**Delinquency:** When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of county commissioners and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

MCA 7-12-2163(2)

## **PAYMENT OF ASSESSMENTS**

The payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 30 years.

MCA 7-12-2167(1)

**Federal Loan Exception** If federal loans are available, payments may be spread over a term of not to exceed 40 years.

MCA 7-12-2167(2)

The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or if the board of county commissioners so prescribes in the resolution authorizing issuance of the special improvement district bonds, in equal semiannual installments of principal and interest, each in the amount required to pay the principal over the term of payment, with interest at the rate then borne by the assessment.

MCA 7-12-2167(3)

**Prepayment:** Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue thereon through the next date on which interest on bonds of the special improvement district is payable.

MCA 7-12-2167(4)

**Interest Rate on Unpaid Assessments:** Except as provided below, the installments of assessments remaining unpaid bear simple interest at an annual rate equal to the sum of:

- (a) 1/2 of 1% a year; plus
  - (b) the average interest rate payable on the outstanding bonds or warrants of the RSID at the time the assessment is levied each fiscal year; plus
  - (c) at the option of the board of county commissioners, up to an additional 1/2 of 1% a year.
- The board of county commissioners may subsequently reduce or eliminate this additional

interest rate. If it is reduced or eliminated, it may not be subsequently increased or reimposed.

MCA 7-12-2176(1) & (2)

**Interest on Unpaid Assessments When Secured Bonds Have Variable Rate:** If and so long as the bonds or warrants secured by the assessments bear interest at a variable rate, the installments of assessments remaining unpaid must bear simple interest at an annual rate equal to the sum of:

- (a) 1% a year; plus
- (b) the interest rate payable on the outstanding bonds or warrants of the RSID at the time the assessment is levied each fiscal year; plus
- (c) to the extent that the interest rate on the bonds or warrants is then less than the maximum rate prescribed for the bonds or warrants or if there is no prescribed maximum rate, up to an additional 1% a year, as may be prescribed by the board of county commissioners in the resolution authorizing the issuance or sale of the bonds or warrants.

MCA 7-12-2176(3)

## **RSID BONDS & WARRANTS**

Bonds and warrants must be drawn against either the construction or maintenance fund created for the RSID and must bear interest from the date of registration until called for redemption or paid in full. Interest must be payable annually or semiannually. Bonds may extend over a period not to exceed 30 years. However, if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years.

MCA 7-12-2171

**Issuance and Sale:** The board of county commissioners shall sell bonds or warrants to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount not less than 97% of the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and county. Except as noted below, the provisions of 7-7-4251, 7-7-4252, and 7-7-4254) apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants.

MCA 7-12-2172(1) & (3)

The bonds or warrants may be sold at a private negotiated sale as determined by the board of county commissioners pursuant to 17-5-107 and subject to the requirements of 7-12-2171.

MCA 7-12-2172(2)

**Proceeds of Bonds or Warrants:** The board of county commissioners shall use the proceeds of such sale in making payment for the cost of the improvements. Payments to contractors may be made either from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board.

MCA 7-12-2173(1)

All interest earned on the investment of bond or warrant proceeds during the construction of improvements must be credited to the construction account of the improvement district fund from which the proceeds were withdrawn.

MCA 7-12-2173(2)

Any proceeds of the bonds or warrants, including investment income thereon, remaining after payment of all costs of the improvements must be transferred to the sinking fund in the improvement district fund and applied, to the extent possible, to the prepayment and redemption of bonds or warrants on the next succeeding redemption date for which notice of redemption may properly be given.

MCA 7-12-2173(3)

**Redemption of Bonds and Warrants:** The county treasurer shall first pay out of the proper special improvement district fund, on each interest payment date, the interest on all outstanding warrants or bonds and the principal, if any, then payable on the warrants or bonds. Any funds remaining in the fund must be applied to the redemption of the warrants or bonds in the order specified in the resolution authorizing the issuance of the bonds.

MCA 7-12-2174(1)

District warrants or bonds must be redeemed on any interest payment date from the proceeds of the bonds or warrants remaining after payment of all costs of the improvements, or from the prepayment of assessments levied in the district. RSID bonds or warrants may otherwise be subject to redemption and prepayment as provided in the resolution on any interest payment date.

MCA 7-12-2174(1)

## **RSID REVOLVING FUND**

In order to secure prompt payment of any RSID bonds or warrants, the board of county commissioners may create, establish, and maintain by resolution a fund to be known and designated as the rural special improvement district revolving fund. The revolving fund may not be eliminated until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged.

MCA 7-12-2181

**Covenants to Use Revolving Fund:** In connection with the issuance of RSID bonds or warrants, the board of county commissioners may undertake and agree:

- (a) to make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts, to the extent that funds are available;
- (b) to provide funds for the revolving fund pursuant to the provisions of 7-12-2182 by annually making a tax levy or, in lieu of the tax levy, a loan from the general fund, subject to the maximum limitations imposed by 7-12-2182; and
- (c) to retain in the revolving fund a balance up to 10% of the then-outstanding rural improvement district bonds and warrants secured by the revolving fund.

## MCA 7-12-2185(1)

The above undertakings and agreements are binding upon the county with respect to the RSID bonds or warrants until the earlier of:

- (a) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the rural improvement district is the debtor; or
- (b) the date that is the later of:
  - a. the final stated maturity date of the bonds or warrants; or
  - b. the date on which all special assessments levied in the district have been either paid or discharged. (*See details at MCA 7-12-2185(2)(b) for when the discharge of delinquent special assessments is said to occur.*)

## MCA 7-12-2185(2)(a)

Prior to entering into the above undertakings and agreements, the county shall take into consideration the factors detailed at MCA 7-12-2185(3), including other circumstances that the board may determine to be material to the public interest of securing the bonds or warrants by the revolving fund. Any findings or determinations with respect to the listed factors made by the board of county commissioners in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the board has taken into consideration the factors required.

## MCA 7-12-2185(3) &amp; (4)

**Covenants to Not Use Revolving Fund:** In lieu of the undertakings and agreements set forth in subsection (1), the county may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund does not secure the bonds or warrants and that the bonds or warrants are payable solely from the district fund created for the bonds or warrants and do not have a claim against the revolving fund.

## MCA 7-12-2185(5)

**Sources of Money for Revolving Fund:** For the purpose of providing funds for the revolving fund, the board of county commissioners:

- (a) shall include in the cost of the improvements an amount of at least 5% and not more than 10% of the principal amount of the bonds or warrants to be issued as provided in 7-12-2153(2);
- (b) may, from time to time, transfer to the revolving fund from the general fund of the county an amount as may be necessary. The amount transferred is a loan from the general fund to the revolving fund.
- (c) shall, in addition to a transfer or transfers from the general fund or in lieu of a transfer, levy for the revolving fund a tax, declared to be for a public purpose, on all taxable property in the county as is necessary to meet the financial requirements of the revolving fund. A tax may not be levied if the balance in the revolving fund will exceed 10% or, with the amount levied by the tax, will exceed 10% of the principal amount of the then-outstanding RSID bonds and warrants secured by the revolving fund after all required transfers have been made to the district funds through fiscal yearend.

## MCA 7-12-2182(1)

Whenever there is money in the district fund that is not required for payment of any bond or warrant or interest, money necessary to pay the loan provided for in 7-12-2183 (see below) must, by order of the board, be transferred to the revolving fund and the balance of the money or, if there is no outstanding loan, as much of the money as the board considers necessary may be transferred to the improvement district's maintenance fund. After all the bonds and warrants secured by the revolving fund have been fully paid, all money remaining in the district fund must, by order of the board, be transferred to and become part of the revolving fund or the improvement district's maintenance fund.

MCA 7-12-2182(2)

**Loan from Revolving Fund to Pay Bonds:** When any RSID bond or warrant secured by the revolving fund or any interest on the bond or warrant becomes due and payable and there is either no money or insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the bond, warrant, or interest, an amount sufficient to make up the deficiency must be loaned by the revolving fund to the district fund. The bond, warrant, or interest must be paid from the money loaned and money available in the district fund. The loan must be made even if, in the case of bonds or warrants bearing interest at a variable rate, the interest rate on the special assessments at the time the loan is made is less than or later becomes less than the interest rate on the bonds or warrants.

MCA 7-12-2183(1)

**Loan from Revolving Fund to Pay Emergency Repairs:** If there is insufficient money in the RSID maintenance fund to pay the cost of emergency repairs, the board of county commissioners, by order or resolution, may loan money from the revolving fund to the district maintenance fund. The loan must be repaid in annual installments in not more than 3 years. The loans may not cause a default in the payments of the principal of the bonds or warrants or the interest on the bonds or warrants. The loan must be repaid by an assessment if other funds are not available. If there are insufficient funds in the revolving fund to make the loans without causing a default in the payment of the principal of the bonds or warrants or the interest on the bonds or warrants secured by the revolving fund, then the loans may not be made.

MCA 7-12-2183(2)

**Lien Arising from Revolving Fund Loan:** Whenever a loan is made to a RSID fund from the revolving fund, the revolving fund has a lien for the amount of the loan on the land within the district. If, after all the bonds and warrants have been fully paid and all money remaining in the district fund has been transferred to the revolving fund, there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district for which unpaid assessments are owed to the district for the purpose of paying off the loan to the revolving fund.

MCA 7-12-2184

**Utilization of Excess in Revolving Fund:** Whenever there is in the revolving fund an amount in excess of the amount deposited pursuant to 7-12-2153(2) (i.e., between 5% & 10% of bond principal – see requirements above) and in excess of 10% of the then-outstanding RSID bonds and warrants secured by the revolving fund and the board considers any part of the excess to be

greater than the amount necessary for payment or redemption of maturing bonds or warrants secured by the revolving fund or interest on the revolving fund, the board may order that any part of the amount the board considers greater than the amount necessary to be:

- (1) transferred to the general fund of the county;
- (2) used for the purchase of property at sales for delinquent taxes, assessments, or both; or
- (3) used for the purchase of property that may have been struck off or sold to the county for delinquent taxes, assessments, or both and against which there is an unpaid assessment for special improvements and there are outstanding special improvement district bonds or warrants of the city or town.

MCA 7-12-2186

### **DISTRICT RESERVE ACCOUNT**

If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

MCA 7-12-2153(3)(c)

If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-2183.

MCA 7-12-2153(3)(d)

Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

MCA 7-12-2153(3)(e)

### **CHANGE IN OUTSTANDING PRINCIPAL – RELEVY OF ASSESSMENTS**

If bonds or warrants are prepaid, or if refunding bonds are issued and the principal amount of outstanding bonds is decreased or increased, the assessments levied in the district must be reduced or increased, respectively, pro rata by the principal amount of the prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds.

MCA 7-12-2191

If refunding bonds are issued, the assessments may be re-levied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued. The board shall reassess and re-levy the assessments, with the same effect as an original levy, in reduced or increased amounts, in accordance with the provisions of 7-12-2158 through 7-12-2160.

MCA 7-12-2191

## **REFUNDING BONDS**

A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for that purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution.

MCA 7-12-2193(1)

**When Public Hearing & Notice Required:** If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of the bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that the issuance of refunding bonds is in the best interest of the special improvement district.

MCA 7-12-2193(2)

Bonds may not be refunded by the issuance of refunding bonds unless:

- (a) (i) the bonds to be refunded bear interest at a fixed rate or rates and the rate of interest offered on the refunding bonds is at least 1/2 of 1% a year less than the rate of interest on the bonds to be refunded;
- (ii) the refunding bonds are to bear interest at a variable rate, which is reasonably expected to result in less interest payable on the refunding bonds than the interest payable on the refunded bonds; or
- (iii) the bonds to be refunded bear interest at a variable rate and the board determines that the issuance of fixed rate refunding bonds is in the best interest of the district and the county or the board determines that the issuance of variable rate refunding bonds based on a different index or formula than that of the refunded bonds is reasonably expected to result over the remaining term of the bonds to be refunded in an interest rate at least 1/2 of 1% a year less than the rate of interest on the refunded bonds;
- (b) there is or will be on the next payment date default in the payment of bond principal or interest; or
- (c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.

MCA 7-12-2193(4)

**Escrow:** Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received from their sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state. Deposited funds must be invested per requirements of 7-12-2193(5)(b). The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds. The county may pay the reasonable



costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

MCA 7-12-2193(5)

## **DISSOLUTION OF DISTRICT**

Effective October 1, 2021: (1) A district created under this part may be dissolved if:

- (a) the dissolution of the district is considered to be in the best interest of the county and the inhabitants of the district;
  - (b) the purpose for creating the district has been fulfilled; or
  - (c) the work and improvements engaged in under the authority of the district have been completed or otherwise secured.
- (2) At any time required for the public interest or convenience, the board of county commissioners may pass a resolution of intention to dissolve a district except as provided in subsection (3).
- (3) If a district lacks sufficient funds to liquidate all existing charges against the district prior to the date of the dissolution, the district may not be dissolved.
- (4) After the passage of the resolution provided for in subsection (2), the county clerk shall publish notice, pursuant to 7-1-2121, of the intention to dissolve the district. A copy of the notice must be mailed, pursuant to 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the district listed in the owner's name on the last-completed assessment roll for state, county, and school district taxes.
- (5) The notice required in subsection (4) must specify:
- (a) the boundaries of the district to be dissolved;
  - (b) the date of the passage of the resolution of intention to dissolve as provided in subsection (2);
  - (c) the date set for the passage of the resolution of dissolution; and
  - (d) that the resolution to dissolve may be passed unless the county clerk receives written protest as provided in subsection (6) and 7-12-2125 in advance from the owners of property in the district.
- (6) (a) If a written protest against the dissolution of the district as provided in 7-12-2125 is received, further proceedings may not be taken for a period of 6 months from the date when the protest was received by the county clerk if the board of county commissioners finds the protest is made by owners of property in the district assessed for more than 50% of the cost of the improvements or, if the costs of the improvements within the district have been met, 50% of the annual maintenance as determined by the method or methods of assessment in the resolution of intention to create the district.
- (b) Property owned by a government entity must be considered the same as any other property in the district in determining whether or not sufficient protests have been filed as provided in subsection (6)(a).
- (7) The decision of the board of county commissioners to pass a resolution to dissolve the district pursuant to this section is final and conclusive.
- (8) Except as provided in subsection (9), any assets remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled must be:

- (a) deposited in the general fund of the local government;
  - (b) in the case of multicounty districts, divided in accordance with their interlocal agreement and deposited in the general fund of each county; or
  - (c) transferred to a new improvement district that has been created to provide improvements to substantially the same area as provided by the dissolved improved district.
- (9) If the remaining assets of the dissolved district are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor.
- (10) (a) As used in this section, "owner" means the record owner of fee simple title to the property as of the date a protest is filed.
- (b) The term does not include a tenant or other holder of a leasehold interest in the property.
- MCA 7-12-2124

Effective October 1, 2021: **Right to protest dissolution of district.** (a) Except as provided in subsection (b), any owner of property liable for the assessments within the district may make written protest against the dissolution of the district at any time within 30 days of the date of first publication of the notice of passage of a resolution of intention to dissolve the district as provided in 7-12-2124(4). The protest must be in writing, identify the property in the district owned by the protestor, and, except as provided in 7-12-2141, be signed by all owners of the property. The protest must be delivered to the county clerk who shall endorse on the protest document the date of its receipt by the county clerk.

(b) If the time period described in subsection (a) includes a holiday as enumerated in 1-1-216, other than a Sunday, the period must be extended for an additional 2 days.

MCA 7-12-2125

## **TRANSFER OF DISTRICT TO CITY OR TOWN**

When a special improvement district has been created in a county and the property contained therein subsequently becomes a part of the boundaries of an incorporated city or town, the board of county commissioners may transfer the operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon. A city or town may accept the responsibility to operate and control such a district.

MCA 7-12-2126(1) & (2)

An agreement for transfer of responsibilities from a county to a city or town must be properly executed in writing and must be approved by both governing bodies. The date of transfer of operation, control, and management is the date the agreement is fully effective or the date of transfer specified in the agreement, whichever is later.

MCA 7-12-2126(3)

## **TRANSFER OF OWNERSHIP OF IMPROVEMENTS TO OWNERS OF PROPERTY**

**Transfer of ownership of improvements:** A board of county commissioners may transfer the ownership of the improvements in a district to the owners of property in a district. Upon receipt

of a petition signed by at least 66% of the owners of real property in a district requesting that the ownership of the improvements be transferred, the board shall, after providing public notice pursuant to 7-1-2121, hold a public hearing. The petition must include a description of the improvements that the petitioners are requesting be transferred, the reasons for the request, and a statement acknowledging that if the transfer occurs, the property owners assume responsibility for the operation and maintenance of the improvements. A copy of the notice must be mailed, as provided in 7-1-2122, to each person, firm, or corporation or the agent of the person, firm, or corporation owning real property within the district. At the public hearing, the board shall accept comment regarding the proposed transfer. Within 60 days after the hearing, the board shall decide whether to transfer ownership of the improvements to the property owners or to continue the operation of the district and maintenance and control of the improvements. If the board decides to transfer ownership of the improvements, the property owners in the district assume ownership and responsibility for the operation and maintenance of the improvements and the district ceases to exist. Any debts owed by or assets credited to the district become debts and assets of the property owners on the date that the transfer is approved by the board.

MCA 7-12-2128

### **POOLING OF BONDS OF DISTRICTS IN COUNTY**

If the board of county commissioners determines by resolution that the pooling of bonds of more than one special improvement district of the county is in the best interest of the county and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates, the county may issue bonds of the districts combined in a single offering. Such bonds must be secured by the rural special improvement district revolving fund of the county.

MCA 7-12-2192(1)

The bonds must be drawn against a sinking fund that has separate accounts for each special improvement district combined for financing purposes, into which must be payable the assessments levied in each of the districts.

MCA 7-12-2192(2)

### **WATER USER ENTITIES EXEMPT FROM ASSESSMENTS**

Rights-of-way, ditches, flumes, pipelines, dams, water rights, reservoirs, equipment, machinery, motor vehicles, and other personal property owned by a nonprofit water company, water users' association, irrigation company, canal company, ditch company, reservoir company, or similar nonprofit water user entity are exempt from every special assessment imposed by any improvement or maintenance district created under Title 7, chapter 12.

MCA 7-12-2196

### **LIGHTING SYSTEM MAINTENANCE DISTRICT**

When there has been or shall be created a RSID for the purpose of securing a lighting system for the territory embraced in such RSID, the board of county commissioners may enter into a contract with other persons or corporations for the purpose of furnishing light to said RSID when:

- (1) no expense of construction is incurred by such rural improvement district in the installation of such lighting system;
- (2) it is necessary only to secure funds for the maintenance and operation of said system; and
- (3) lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation.

MCA 7-12-2201

**Apportionment of Costs:** The cost of the maintenance and operating service to a lighting rural improvement district may be apportioned among the various tracts of land within the district:

- (a) in proportion to the assessed value of the lands within the district, as determined by the board of county commissioners;
- (b) by assessing the cost equally against each of the lots or parcels located within the district;
- (c) in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or
- (d) in proportion to the area, as determined by the board, of that portion of each tract included in the district.

MCA 7-12-2202(1)

**Assessment Resolution:** By the later of the first Thursday after the first Tuesday in September or 30 days after receiving certified taxable values, the board shall adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining the lighting system. The resolution levying assessments to defray the cost of maintenance must be prepared and certified to in the same manner as a resolution levying assessments for making, constructing, and installing improvements in the district.

MCA 7-12-2202(2)

**Lien:** Any assessment levied, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied. This lien can be only extinguished by payment of such assessments, with all penalties, costs, and interest.

MCA 7-12-2205

**Maintenance Fund:** Assessments collected shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated. Such funds shall be used to defray the expense of maintenance of said system and for no other purpose.

MCA 7-12-2203



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**BUSINESS IMPROVEMENT DISTRICTS (BID)**

REVISION JANUARY 2022

REF: CO12

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## **ESTABLISHMENT OR EXPANSION OF A BUSINESS IMPROVEMENT DISTRICT (BID)**

Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition, the governing body shall establish or expand a district.

MCA 7-12-1111(1)

**Resolution of Intention:** The governing body shall pass a resolution of intention, designating the boundaries of the district. The district may not include areas that are zoned primarily as residential areas.

MCA 7-12-1111(1) & (3), 1112(1)

**Noncontiguous Areas:** A district may be composed of noncontiguous areas if the properties in a district have a common purpose of providing overnight stays at lodging facilities. The boundaries of such a district must encompass all properties in the district with the same identified purpose.

MCA 7-12-1111(4)

**Public Notice:** Notice of passage of the resolution must be published as provided in 7-1-2121 (See CO01-General Topics). A copy of the notice must be mailed to every owner of real property within the proposed district or area of expansion.

MCA 7-12-1112(2)

**Resolution of Creation or Expansion:** If there are no or insufficient protests, or if any protests have been denied, the governing body shall pass a resolution creating or expanding the district in accordance with the resolution of intention.

MCA 7-12-1115

**Duration of District:** The period of duration of a BID is for the period specified in the resolution creating the district but shall not be for a period longer than 10 years unless the duration of the district is extended in compliance with the provisions of this part for the creation of a district.

MCA 7-12-1141

## **BOARD OF TRUSTEES**

The board of county commissioners shall appoint not less than five or more than seven owners of property within the district to compose the board of trustees of the district. The number of members of the board, once established, may be changed within these limits from time to time by subsequent resolutions of the county commissioners.

MCA 7-12-1121(1) & (2)

Members of the board may not receive compensation.

MCA 7-12-1122(2)

**Tourism BID:** A BID may be created to aid in tourism, promotion, and marketing within the district. The director for a BID created for this purpose must be the executive director of a

nonprofit convention and visitors bureau, as defined in 15-65-101, if a nonprofit convention and visitors bureau is operating within the governing body's jurisdiction.

MCA 7-12-1102(4) & 1121(1)

## **BUDGET AND WORK PLAN**

At a time determined by the county commissioners, the board of trustees shall submit to the county for approval a work plan and budget for the ensuing fiscal year. Following public notice that a work plan and budget have been submitted and that the county will levy an assessment to defray the cost of the work plan and budget, the county commissioners shall hold a public hearing on objections to the work plan and budget, and after the hearing may modify the work plan and budget as it considers necessary and appropriate.

MCA 7-12-1132(1) & (3)

**Liability Insurance Required:** The county may not approve the budget or the work plan unless the budget and the work plan provide for liability insurance coverage insuring the district, the board of trustees, and the county against legal liability for personal injury and property damage in an amount determined sufficient for that purpose by the county commissioners.

MCA 7-12-1143

**Resolution for Levy of Assessment:** After approval of the work plan and budget and to defray the cost of the work plan and budget for the next fiscal year, the governing body shall by resolution levy an assessment upon all of the property in the district using as a basis one of the methods prescribed in 7-12-1133. A copy of the resolution must be delivered to the treasurer of the local government to be placed on the tax roll and collected in the same manner as other taxes.

MCA 7-12-1132(4) & (5)

**Tourism BID:** A board created for the purpose of 7-12-1102(4) (i.e., to aid in tourism, promotion, and marketing within the district) in a municipality or county where a nonprofit convention and visitors bureau, as defined in 15-65-101, is operating shall consult with the nonprofit convention and visitors bureau in developing a work plan and budget for the ensuing fiscal year.

MCA 7-12-1132(2)

## **ASSESSMENT OF COSTS**

At the same time that the board submits the annual budget and work plan to the governing body, the board shall also recommend to the county commissioners a method of levying an assessment on the property within the district. In determining the method of assessment to be used, the county commissioners shall consider the recommendations of the board. The county shall levy the assessment using one of the following methods:

- (a) **Area Option:** each lot or parcel of land within the district may be assessed for that part of the whole cost that its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

- (b) Lot Option: if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;
- (c) Flat Fee Option: if the governing body determines that benefits derived by each lot or parcel are proportional, the governing body may use standard criteria, such as individual occupancy or daily use, and make the assessment on a flat-fee basis based on the criteria;
- (d) Taxable Valuation Option: each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the whole cost of the district that its taxable valuation bears to the total taxable valuation of the property of the district;
- (e) Square Footage Option: each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district;
- (f) if the governing body determines that benefits derived by each lot or parcel are disproportional, the governing body may use classification criteria, such as location within the district, economic impact, or any other measurable criteria, in conjunction with methods of assessing fees outlined in (a) through (e). Each classification must have its own rate. There may not be more than six classifications upon which a charge is imposed.
- (g) by using any combination of the assessment options provided in subsections (a) through (f).

MCA 7-12-1133(1) & (2)

### **NO DECREASE OF PUBLIC SERVICES**

The governing body may not decrease the level of public services in the district existing prior to the creation of the district unless the services at the same time are decreased throughout the jurisdictional area of the governing body, nor may it transfer the financial burden of providing those services to the district. The governing body may not discriminate in the provision of publicly funded services between areas included in such district and areas not so included.

MCA 7-12-1142

### **DEBT OF DISTRICT SOLELY THE RESPONSIBILITY OF DISTRICT**

Obligations or debt of a BID are not obligations or debt of the county, and in no event is a debt or obligation of a BID payable out of any funds or properties of the county. Debts and obligations of a district are payable solely from the funds and properties of the district.

MCA 7-12-1144





**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**MULTIJURISDICTIONAL SERVICE  
DISTRICTS**

REVISION JANUARY 2022

REF: CO13

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## **2009 LEGISLATURE – SB 57**

The 2009 Legislature enacted legislation (SB 57) that revised the laws relating to special districts. SB 57 established uniform standards for the creation, administration and operation of special districts, and repealed specific provisions relating to many special districts.

**Multijurisdictional Service Districts** were one of the types of special districts specifically *included* in SB 57 – that is, SB 57 specifically repealed the former statutory provisions relating to multijurisdictional service districts in Title 7, Chapter 11, Part 11, MCA. If the boundaries of a multijurisdictional service district that was in existence on July 1, 2009, are altered or if there is a change in amount or method of assessment, the district will be subject to the provisions of the new legislation codified in Title 7, Chapter 11, Part 10, MCA – “Special Districts – Creation and Governance”. Until that time, however, existing districts will continue to be subject to the now-repealed provisions of Title 7, Chapter 11, Part 11, MCA – “Multijurisdictional Service Districts”.

Effective date of SB 57: July 1, 2009.

The Savings clause of the bill provides that the new legislation does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 2009.

The Transition clause of the bill provides that a special district in existence on July 1, 2009, must comply with the new provisions upon (1) alteration of its boundaries or (2) a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on July 1, 2009, the proposal is subject to the dissolution provisions of the new law (MCA 7-11-1029). A special district in existence on July 1, 2009, is required to comply with the additional reporting provisions of the new law (MCA 7-11-1014) only upon alteration of its boundaries.

## **SERVICES THAT MAY BE PROVIDED**

Note: This section not repealed by L2009 SB57

A multijurisdictional service district may provide only those services that are authorized to be provided by local governments. The services that a multijurisdictional service district may provide are:

- a. recreational programs other than park and recreation programs in a county park district established under Title 7, Chapter 11, Part 10;
- b. road, street, and highway maintenance;
- c. libraries;
- d. jails;
- e. dog control programs;
- f. ambulance service;
- g. dispatch service;

- h. protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation;
- i. health services and health department functions; and
- j. maintenance or provision of any public infrastructure facility, project, or service.

MCA 7-11-1102

## **ADMINISTRATION OF DISTRICT**

**Note:** This section was repealed by L2009 SB57 but is maintained in this compliance supplement for the purpose of auditing multijurisdictional service districts established prior to 7/1/2009.

A multijurisdictional service district must be administered according to an interlocal agreement among the participating jurisdictions within the district.

MCA 7-11-1111(1)

The governing body of a multijurisdictional service district may consist of the entire membership of all governing bodies of the participating jurisdictions, or it may be a joint board with representation as set forth in the interlocal agreement forming the district.

MCA 7-11-1111(2)

An interlocal agreement under this part may enlarge an existing service district or city or county library, but it may not supersede or void an existing contract or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions.

MCA 7-11-1111(3)

A library established under this part as a multijurisdictional service must be administered according to the provisions of 22-1-305 through 22-1-317 (Free Public Libraries).

MCA 7-11-1111(4)

## **FINANCING**

**Note:** This section not repealed by L2009 SB 57

Subject to MCA 15-10-420, local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in accordance with 7-11-1007, and to appropriate funds derived from other than general tax revenue for the operation of the district.

MCA 7-11-1112(1)

Subject to 15-10-420, property taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304 (Free Public Libraries).  
MCA 7-11-1112(1)

A property tax levied for the purpose of financing the district may, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on the property.  
MCA 7-11-1112(2)



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES  
COUNTY OFFICES & BOARDS**

REVISION JANUARY 2022

REF: CO14

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## **COUNTY OFFICERS GENERALLY – FEES COLLECTED**

Each salaried county officer shall charge and collect for the use of the county and pay into the county treasury by the 10th day in each month all fees allowed by law, paid or chargeable in all cases, except as provided in MCA 25-10-403 (prepayment of fees in civil actions). The fees and compensation collected and paid to the county treasurer must be accompanied by an affidavit and copy of the fee book for the preceding month, verified by the officer making the payment.

MCA 7-4-2511(1) & 2512

### **Exceptions:**

7-4-2511(1) does not apply to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in the sheriff's custody.

MCA 7-4-2511(1)

There appears to be a conflict between 7-4-2511(1) and 7-4-2715, as it pertains to the county attorney's collection and remittance of fees to the treasurer (See "Attorney" below). Because 7-4-2715 is specific in regard to the county attorney, it appears that 7-4-2715 should prevail.

**No fees charged state, county or political subdivision:** No fees must be charged the state, any county, or any subdivision thereof, any public officer acting therefore, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees except the fees under 25-1-201(1)(d) and (1)(r).

MCA 7-4-2516

The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge, the fee under 25-1-201(1)(r) for filing a pleading by facsimile or e-mail, and all fees for photocopies, postage and handling, certifications, authentications, and record searches (MCA 25-10-405). MCA 25-10-405 clarifies that fees are collectible from state agencies that are a party to an action but has no effect in cases in which the agency is not a litigant. In those cases, the rule in this section applies, exempting agencies of state and county government from paying official fees. Therefore, a Clerk of District Court may not charge a nonparty state agency for copies and certification of public District Court records.

AGO #3 Vol. 47

State agencies submitting documents to be put of record shall pay the fees provided for in this section (county clerk and recorder fees).

MCA 7-4-2631(3)

**Statement of fees posted.** It is the duty of each officer entitled to collect fees to keep posted in the office a plain and legible statement of the fees allowed by law.

MCA 7-4-2518

**Fees to be paid in advance:** The officers mentioned in this chapter may not perform any official services unless the fees prescribed for the services are paid in advance. The county clerk is not bound to record any instrument, file any paper or notice, furnish any copies, or render any service connected with the office until the fee for the recording or the service as prescribed by law is, if demanded, paid or tendered.

MCA 7-4-2515(1) & (2)

Under subsection (2) (above), the County Clerk may but is not required to demand prepayment of filing or other fees.

Supreme Court Case Minneapolis Steel & Mach. Co. v. Thomas

If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.

MCA 7-4-2631(3)

A salaried county officer may not receive for the officer's own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer and credited to the general fund of the county.

MCA 7-4-2511(2)

**Passport Fees Collected by Clerks of Court:** Because there is no statutory duty imposed upon clerks of court concerning the issuance of passports, it is not a duty of their office for which they are regularly compensated. **Therefore, county clerks of court may personally retain the fees collected for issuance of passports.**

AGO #41 Vol. 34

An officer is not obliged, because his office is salaried, to perform all manner of public service without additional compensation, and for services performed by request, not part of the duties of his office, and which could have been as appropriately performed by any other person, he may recover a proper remuneration.

Supreme Court Case Anderson v. Hinman

## **CONSOLIDATION OF COUNTY OFFICES**

The board of county commissioners of any county may, in its discretion, consolidate any two or more of the offices named in 7-4-2203 and combine the powers and the duties of the consolidated offices.

MCA 7-4-2301(1)

**Exception:** The office of the justice of the peace may not be combined or consolidated with any other office other than another justice of the peace office.

MCA 7-4-2301(2)

Offices of County Treasurer and County Superintendent of Schools may be consolidated into one office provided the officeholder meets the minimum qualifications of both offices.

AGO #31, Vol. 35

**Petition for Consolidation:** A petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of such county. The petition shall be signed by not less than 15% of the registered electors of the county. A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two or more offices among several counties. In this case, the petition shall be signed by not less than 15% of the registered electors in each of the counties affected.

MCA 7-4-2302 & 2303

**Initiation of consolidation by county commissioners:** The board or boards of county commissioners may initiate the consolidation of county offices. Any board or boards desiring to consolidate any two or more offices or any two or more offices among several counties shall first pass a resolution stating the intent of the board or boards to consider consolidation.

MCA 7-4-2305

**Required Process:** The required process of consolidation (petition detail, processing of petition, hearing and resolution, order, publication) is provided in MCA 7-4-2304 to 2311.

**Salary of Combined Office:** When two or more offices are consolidated under a single officer, the officer must receive a salary determined by the board or boards of county commissioners. However, the salary may not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties the officer is required to perform by reason of the consolidations. (See also CO07-Payroll and Employee Benefits)

MCA 7-4-2312(1)(a)

The county commissioners shall, in conjunction with setting elected officials' salaries as provided in 7-4-2503, adopt a resolution fixing the percentage adjustment of the salary of the officer holding the consolidated office for the term beginning January 1 immediately following the adoption of the resolution. The board shall adopt the resolution for the subsequent term of the consolidated office prior to the first day of candidate filing for that term.

MCA 7-4-2312(1)(b)

## **COUNTY OFFICE HOURS**

Unless otherwise provided by law, each officer shall keep the officer's office open for the transaction of business during the office hours determined by the board of county commissioners by resolution after a public hearing. Those hours must be consented to by any affected elected county officer.

MCA 7-4-102(1)



County treasurers may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

MCA 7-4-102(2)

### **ABSENCES OF COUNTY OFFICERS**

If a county officer is absent from the state for a period of more than 30 consecutive days without the consent of the board of county commissioners, the officer forfeits the office.

MCA 7-4-2208

If the county officer who is seeking consent to be absent from the state for more than 30 consecutive days is a member of the board of county commissioners, the officer may participate in the vote on the question of providing consent for the absence.

MCA 7-4-2208(2)

**Exception:** If an elected official is ordered to military service, the official is entitled to a leave of absence for the duration of the military service. Such leave of absence does not create a vacancy in office or require the official to forfeit the office. If an acting official is appointed pursuant to 10-1-1010, the elected official's leave of absence must be without pay.

MCA 10-1-1008

### **OFFICE OF COUNTY ATTORNEY**

**Duties:** The duties of county attorney are detailed at MCA 7-4-2711 to 2714.

**Full or Part Time Position:** In a county with a population of 30,000 or more, the office of county attorney must be a full-time position. In a county with a population of less than 30,000, the county commissioners may, with the consent of the county attorney, by resolution effective July 1 of any year, establish the office of county attorney as a full-time or part-time position. A copy of the resolution must be provided to the department of justice.

MCA 7-4-2706

**Limitations on activities of county attorneys:** A full-time county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that the county attorney may engage in self-representation and may represent the county attorney's immediate family. A deputy county attorney in a county in which the office of county attorney is a full-time position who is paid 70% or more of the county attorney's salary is also prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except as to those matters in which the deputy county attorney has a direct interest.

MCA 7-4-2704

The county attorney shall deliver receipts for money or property received, and file duplicates of the receipts with the county treasurer. The county attorney shall, on the first Monday of January,

April, July, and October in each year, file with the county clerk an account, verified by oath, of all money received by the county attorney in an official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

MCA 7-4-2715, MCA 7-6-2117(1)

### **OFFICE OF COUNTY AUDITOR (In Counties Having A County Auditor)**

The office of county auditor exists in all counties of the first, second, third, or fourth class that have a population in excess of 15,000. County commissioners in all other counties *may* create a county auditor's position. A county auditor position required or created as provided in subsection (1) or (2) may be either a full-time or a part-time position or in combination with another position pursuant to 7-4-2301 as determined by the board of county commissioners.

MCA 7-6-2401

All claims against a county shall be presented to the county auditor, who shall investigate and examine them. A claim against the county may not be paid or a warrant drawn for the claim unless the claim has the approval of the county auditor.

MCA 7-6-2407(1) & (4)(b)

Within 30 days of receipt of a claim, the county auditor shall approve or disapprove the claim, or notify the board of county commissioners, the claimant, and any affected county officials or department heads in writing that the claim requires further investigation. Further investigation must be completed, and the claim approved or disapproved, with 60 days of the written notification.

MCA 7-6-2407(2)

The county auditor shall report approved claims to the board of county commissioners at its regular meeting after investigations into the claims have been completed. The county auditor shall keep a complete record of all claims submitted and investigations and examinations of the claims.

MCA 7-6-2407(3)

If the county auditor disapproves payment of a claim, within 5 days of the disapproval the auditor must provide written documentation to the board of county commissioners, the claimant and any affected county officials or department heads specifying the reasons for the disapproval. Within 15 days of the disapproval, the auditor must present documentation and testimony in support of the disapproval to the board of county commissioners in a public hearing at a properly noticed and regularly scheduled meeting of the board of county commissioners. The commissioners may order the payment of the claim by a majority vote at a regular board meeting. The county auditor may appeal this decision to the district court within 7 working days. If the board's decision is not appealed within the required 7-day period, the claim must be paid.

MCA 7-6-2407(4)(b)

The county auditor shall receive from the county clerk and recorder, within 10 days after the adjournment of each session of the board of county commissioners, a list of the claims allowed

or rejected, either in whole or in part, by them. This list must be recorded by the auditor in a book kept for that purpose.

MCA 7-6-2411

**Examination of books and accounts:** It is the duty of the county auditor to examine the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, the clerk of the district court, and all other county and township officers\*\* within 15 days prior to the first regular session of the board of county commissioners in March, June, September, and December of each year unless a longer time is granted to the auditor by the board.

MCA 7-6-2409(1)

\*\* MCA 7-4-2203 lists the following county officers: (a) county attorney; (b) clerk of the district court; (c) county clerk; (d) sheriff; (e) treasurer; (f) county superintendent of schools; (g) county surveyor; (h) assessor; (i) coroner; (j) public administrator; and (k) justice of the peace.

The quarterly report shall contain a full and complete statement of the money received and disbursed by each of the officers since the last examination and report. For the purpose of this section, the county auditor has free access to all books and papers in each of the offices.

MCA 7-6-2409(2)

## **OFFICE OF COUNTY CLERK AND RECORDER**

**Duties:** The duties of the county clerk and recorder and election administrator are detailed at MCA 7-4-2611.

**Recording of Documents:** Documents subject to recording by the clerk and recorder are detailed at MCA 7-4-2613. The clerk and recorder is required to keep indexes of all recorded documents, as detailed at MCA 7-4-2619.

**Procedure to Record Documents:** When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, the clerk must endorse upon the document the time it was received, noting the year, month, day, hour, and minute of its receipt, and the receipt of the instrument must be immediately entered in the county clerk and recorder's receipt book.

MCA 7-4-2617(1)

**Search of Records:** Upon the application of any person and upon the payment of the applicable fees, the county clerk may: (1) make searches for conveyances, mortgages, and all other instruments recorded or filed in the county clerk's office; and (2) furnish a certificate stating the names of the parties to the instruments; the dates of the instruments; the year, month, day, hour, and minute they were recorded or filed; and the book and pages where they are recorded.

MCA 7-4-2621

**Availability of Records:** All books or records, maps, charts, surveys, and other papers on file in the county clerk's office must be open during office hours for the inspection of any person who

may desire to inspect them and may be inspected without charge. The county clerk shall arrange the books of record and indexes in the office in suitable places that facilitate their inspection.  
MCA 7-4-2622

**Fees of county clerk:**

- (1) Except as provided in 7-2-2803(4) (fees for recording and certification of alteration of county boundaries), 7-4-2632 (fees for photographic reporting), and 7-4-2637 (fees for recording documents); [See these requirements, below], the county clerks shall charge, for the use of their respective counties:
  - (a) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, \$5;
  - (b) for filing of subdivision and townsite plats, \$25 plus
    - (i) for each lot up to and including 100, 50 cents;
    - (ii) for each additional lot in excess of 100, 25 cents;
  - (c) for filing certificates of surveys and amendments thereto, \$25 plus 50 cents per tract or lot;
  - (d) for each page of a document required to be recorded with a subdivision, townsite plat, or certificate of survey, \$1;
  - (e) for a copy of a record or paper:
    - (i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and
    - (ii) for each certification with seal affixed, \$2;
  - (f) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;
  - (g) for administering an oath with certificate and seal, no charge;
  - (h) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;
  - (i) for filing, indexing, or other services provided for by Title 30, chapter 9A, part 5, the fees prescribed under those sections;
  - (j) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, \$3;
  - (k) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, \$2;
  - (l) for each certified copy of a birth certificate, \$8, and for each certified copy of a death certificate, \$5;
  - (m) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.
- (2) The county clerks shall charge, for the use of their respective counties, the fee as provided in 7-4-2632 for recording and indexing the following:
  - (a) each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with the seal affixed; and
  - (b) each affidavit of annual labor on a mining claim, including a certificate that the instrument has been recorded with the seal affixed.

- (3) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis.
- (4) Effective July 1, 2021:
- (a) A county shall transfer \$2 of each fee collected for a death certificate issued under subsection (1)(l) to the department of revenue for deposit in the account in the state special revenue fund to the credit of the board of funeral service.
  - (b) The fee must be transferred monthly unless the department and the county have agreed to a different transfer schedule.

MCA 7-4-2631

The fees collected above shall be remitted to the county treasurer by the 10th day of the following month, and shall be credited to the county general fund.

MCA 7-4-2511

**Fee for Photographic Recording:** Where recording is done by photographic or similar process, the clerk and recorder shall charge \$7 per page or fraction of page. The clerk and recorder shall deposit \$1 of this fee into the County Records Preservation Fund (see below), and the remainder of this fee shall be credited to the county general fund.

MCA 7-4-2632 & 2635, MCA 7-4-2511(2)

**Records Preservation Fund (BARS Fund No. 2393):** The county shall establish a records preservation fund for the purpose of preserving records maintained by the clerk and recorder. The county clerk and recorder is responsible for expenditures from the fund and shall use the money for records preservation. The clerk and recorder shall deposit \$1 of the fee received under 7-4-2632 (see above) into the records preservation fund. The county commissioners may transfer to the general fund any money in the fund that is not needed for records preservation.

MCA 7-4-2635 & 2637(3)(b)

On each instrument delivered for recording, the county clerk shall endorse on it all charges made for each service, to document the charges entered on the fee book or reception record in the county clerk's office.

MCA 7-4-2634

**Fee for Recording Standard Document:** Except as provided in MCA 7-4-2631 (see above), the fee for recording a standard document that meets the requirements of MCA 7-4-2636 is Prior to July 1, 2021: \$7 Effective July 1, 2021: \$8 for each page or fraction of a page.

MCA 7-4-2637(1)

**Note:** MCA 7-4-2636 provides the standards for recorded documents.

Of the Prior to July 1, 2021: \$7 Effective July 1, 2021: \$8 fee, \$1 must be deposited in the county records preservation fund (BARS Fund No. 2393), Prior to July 1, 2021: 25 cents Effective July 1, 2021: 50 cents must be deposited in the county land information fund (BARS Fund No. 2859), Prior to July 1, 2021: 75 cents Effective July 1, 2021: \$1.50 must be transmitted

to the State (BARS Fund No. 7551) Montana land information account, and the remainder must be deposited to the county general fund.

MCA 7-4-2637(3)(a)

**Fee for Recording Non-Standard Document:** Except as provided in 7-2-2803(4) (see below), the fee for recording a document that does not meet the requirements of a standard document as specified in MCA 7-4-2636 is **Prior to July 1, 2021: \$7 Effective July 1, 2021: \$8** for each page or fraction of a page, plus \$10.

MCA 7-4-2637(2)

The fees collected must be deposited in the records preservation fund provided for in 7-4-2635 (i.e., county records preservation fund (BARS Fund No. 2393)).

MCA 7-4-2637(3)(b)

**Fees for Recording and Certification of Alterations of County Boundaries** - When adjoining counties agree on boundary changes, per MCA 7-2-2803, the counties shall negotiate the fees to be charged for compliance with MCA 7-2-2807. MCA 7-2-2807 requires that the county clerk in the county from which property will be transferred shall (1) contract with a land title company to prepare an abstract of the property to be transferred, (2) certify each copy of the recorded documents included in the abstract, and (3) transfer all copies of indexes and recorded documents to the county clerk of the county to which the property will be transferred. The county to which records are transferred must reimburse the county that incurred the costs.

MCA 7-2-2803(4) & 2807

Effective May 14, 2021: **Election Security Assessments:** The county election administrators shall annually assess their compliance with election security rules established by the secretary of state. County election administrators shall provide the results of the assessments to the secretary of state in January of each year to ensure that all aspects of elections in the state are secure. Security assessments are considered confidential information as defined in 2-6-1002. **Note:** Rules have not been established as of January 2022.

MCA 13-1-205(1)(b)

Effective October 1, 2021, and applicable to petitions requesting that a political party may qualify to nominate its candidates by primary election (MCA 13-10-606) filed on or after October 1, 2021: **Verification of Signatures:** The county official shall check the names of all signers to verify they are registered electors. In addition, the official shall check all signatures on each sheet or section and compare them with the signatures of the electors as they appear in the records of the office. A signature may not be counted unless the elector has signed in substantially the same manner as it appears in the records of the office. If the elector is registered with a first and middle name, the use of an initial instead of either the first or middle name, but not both names, need not disqualify the signature. The signature may be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registration form as to provide reasonable certainty of its authenticity. Upon discovery of fraudulent signatures or duplicate signatures of an elector on any one issue, the election administrator may submit the name of the elector or the signature gatherer, or both, to the county attorney to be investigated under the provisions of 13-10-612 and 13-35-207.

The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the form in MCA 13-10-609. The county official verifying the number of registered electors signing the petition shall ensure that it is received by the secretary of state at least 95 days before the date of the primary.

The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of the official's office. The copies may be destroyed 3 months after the date the petition was certified unless a court action is pending on the sufficiency of the petition. If a court action is brought within 3 months after the date the petition is certified, the county official may destroy the files only after final disposition of the court action. MCA 13-10-608, 609, & 611

## **OFFICE OF CLERK OF DISTRICT COURT**

Duties of the clerk of district court, as well as the various records (indexes, registers, dockets, etc.) to be maintained by the clerk of district court are set forth in MCA 3-5-501 to 513.

**FullCourt System:** FullCourt is a court case management system that has been deployed in all District Courts by the State Office of the Court Administrator. The system allows the court to record all case specific information in a central database, e.g., parties, attorneys, actions, hearings, judgments, dispositions, etc. It also includes a financial component that supports the entry and distribution of all filing fees, fines and court ordered costs. Reports have been developed to comply with the statutorily referenced judgment book reports and case indexes.

**Fees:** Except as specifically noted below, all **fees** collected by the clerk of district court must be forwarded to the State for deposit in the state general fund, as specified by the State Office of the Court Administrator. **BARS Fund No. 7461** is used by the county to hold these fees until remitted to the State via the monthly County Collection Report to the Department of Revenue. MCA 25-1-201(2) & (8)

County Clerks of Court may personally retain the fees collected for issuance of passports. AGO #41, Vol. 34

**Fees and Distributions:** The clerk of district court shall collect the following **fees**:

\$90 at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner;  
MCA 25-1-201(1)(a), (2), & (5)

**Distributed as follows** (BARS Fund No. 7463):

- a. \$9 deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714; and
- b. Remainder (\$81) to the State for deposit in the state general fund.

\$80 for filing a complaint in intervention, from the intervenor;

MCA 25-1-201(1)(a)

\$170 for filing a petition for dissolution of marriage;

MCA 25-1-201(1)(a), (2), & (3)(a)

**Distributed as follows** (BARS Fund No. 7464):

- a. \$5 must be deposited in the children's trust fund account established in MCA 52-7-102;
- b. \$19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in MCA 3-2-714;
- c. \$30 must be deposited in the partner and family member assault intervention and treatment fund established in MCA 40-15-110; and
- d. Remainder (\$116) to the State for deposit in the state general fund.

\$150 for filing a petition for legal separation;

MCA 25-1-201(1)(a), (2), & (3)(b)

**Distributed as follows** (BARS Fund No. 7465):

- a. \$5 must be deposited in the children's trust fund account established in MCA 52-7-102;
- b. \$30 must be deposited in the partner and family member assault intervention and treatment fund established in MCA 40-15-110; and
- c. Remainder (\$115) to the State for deposit in the state general fund.

\$120 for filing a petition for a *contested* amendment of a final parenting plan;

MCA 25-1-201(1)(a) & (4)

\$60 from each defendant or respondent, on appearance;

MCA 25-1-201(1)(b)

Prior to May 10, 2021: \$45 Effective May 10, 2021: \$50 on the entry of judgment, from the prevailing party;

MCA 25-1-201(1)(c)

for preparing copies of papers on file in the clerk's office in all criminal and civil proceedings, except as noted in a. & b. below, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

MCA 25-1-201(1)(d)(i)

for a copy of a marriage license, \$5

MCA 25-1-201(1)(d)(ii)

for a copy of a dissolution decree, \$10;

MCA 25-1-201(1)(d)(ii)

**Distributed to the county district court fund**, or if a district court fund does not exist, to the county general fund to be used for district court operations.

MCA 25-1-201(6)



for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means in all criminal and civil proceedings, 25 cents per page;

MCA 25-1-201(1)(d)(iii)

\$2 for each certificate, with seal;

MCA 25-1-201(1)(e)

\$1 for oath and jurat, with seal;

MCA 25-1-201(1)(f)

for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

MCA 25-1-201(1)(g)

**Distributed to the county district court fund**, or if a district court fund does not exist, to the county general fund to be used for district court operations.

MCA 25-1-201(6)

Prior to May 10, 2021: \$45 Effective May 10, 2021: \$50 for filing and docketing a transcript of judgment or transcript of the docket from all other courts;

MCA 25-1-201(1)(h)

\$5 for issuing an execution or order of sale on a foreclosure of a lien;

MCA 25-1-201(1)(i)

\$5 for transmission of records or files or transfer of a case to another court;

MCA 25-1-201(1)(j)

**Distributed to the county district court fund**, or if a district court fund does not exist, to the county general fund to be used for district court operations;

MCA 25-1-201(6)

\$10 for filing and entering papers received by transfer from other courts;

MCA 25-1-201(1)(k)

\$53 for issuing a marriage license Effective October 1, 2021: when one or both parties are present at the solemnization, or \$83 when neither party is present at the solemnization;

MCA 25-1-201(1)(l), (2), & (7)

**Distributed as follows** (BARS Fund No. 7468):

- a. \$13 to the domestic violence intervention account established by MCA 44-4-310;
- b. \$10 (Effective October 1, 2021: or \$30 when neither party to a marriage is present at the solemnization) to the county district court fund, or if a district court fund does not exist, to the county general fund to be used for district court operations; and

- c. Remainder (\$30 Effective October 1, 2021: or \$40 when neither party to a marriage is present at the solemnization) to the State for deposit in the state general fund.

\$70 on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, which includes the fee for filing a will for probate;

MCA 25-1-201(1)(m)

\$55 on the filing of the items required in MCA 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent;

MCA 25-1-201(1)(n)

\$53 for filing a declaration of marriage without solemnization;

MCA 25-1-201(1)(o), (2), & (7), MCA 40-1-311

**Distributed as follows** (BARS Fund No. 7468):

- a. \$13 to the domestic violence intervention account established by MCA 44-4-310;
- b. \$10 to the county district court fund, or if a district court fund does not exist, to the county general fund to be used for district court operations; and
- c. Remainder (\$30) to the State for deposit in the state general fund.

\$100 for filing a motion for substitution of a judge

MCA 25-1-201(1)(p)

\$75 for filing a petition for adoption

MCA 25-1-201(1)(q)

Although this fee is required to be deposited in the state general fund with other District Court fees (see general distribution above), it is remitted to the State on a separate line captioned "Petition for Adoption" in Section 2 of the County Collection Report to the Department of Revenue. (BARS Fund No. 7462)

50 cents per page for filing a pleading by facsimile or e-mail in all criminal and civil proceedings.

MCA 25-1-201(1)(r)

**Distributed to the county district court fund**, or if a district court fund does not exist, to the county general fund to be used for district court operations.

MCA 25-1-201(6)

**Additional Fee for Filing Civil Action:** Prior to October 1, 2021: In addition to other filing fees as described above, a fee of \$20 must be paid to the clerk of district court at the time of filing a civil action in the district court. The fee must be forwarded by the clerk to the State for deposit in the state general fund. Effective October 1, 2021: In addition to other filing fees, the following fees must be paid to the clerk of the district court at the time of filing a civil action in the district

court: (a) a fee of \$20; and (b) if the action is brought pursuant to 40-6-701, in addition to the fee required under (a), a fee of \$5. The fees must be forwarded by the clerk to the department of revenue for deposit in the state general fund. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as proper disbursements. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as proper disbursements.  
MCA 25-1-202

**Payment of Maintenance or Support to Court:** The court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments. The clerk of the district court shall maintain records of payments received by the clerk listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order. (**BARS Fund #7160** may be used for this purpose.)

MCA 40-4-206(1), (2), & (3)

**Handling Fee:** The clerk may charge the payor a handling fee of \$2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into that fund.

MCA 40-4-206(2)

When the State department of public health and human services is providing services under Title IV-D of the Social Security Act or when income withholding is in effect in an order issued or modified after October 1, 1998, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

MCA 40-4-206(3)

**Jurors and Witnesses:** The clerk of the district court shall keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage. The distance from any point to the court must be determined by the shortest traveled route.

MCA 3-5-510(2)

**Juror Fees and Mileage:** A jury panel member must receive \$12 per day for attendance and a mileage allowance, as provided in MCA 2-18-503\*\*, for traveling each way between the member's residence and the court). A jury panel member selected for a case is entitled to an additional \$13 per day while serving. A juror who is excused from attendance upon the juror's own motion on the first day of appearance in obedience to a notice or who has been summoned as a special juror and not sworn in the trial of the case forfeits per diem and mileage. (\*\*See CO05 for mileage reimbursement rates.)

MCA 3-15-201 & 203

**Witness Fees and Mileage:** Witnesses, including expert witnesses, receive a \$10 fee for each day of attendance and the mileage allowance as provided by MCA 2-18-503, for traveling to the place of the trial or hearing.

MCA 26-2-501(1), 502, & 505

**State Reimbursement:** The State Office of Court Administrator shall reimburse the clerk for the amount specified in the warrant as provided in 3-5-901 and 3-5-902. If a witness was subpoenaed by a public defender, the amount must be reimbursed by the Office of State Public Defender as provided in 47-1-119.

MCA 3-15-204, MCA 3-5-511(3)

**Fines and Court Costs – General Disposition Rule:** Money collected by a court as a result of the imposition of fines or assessment of costs for felony and misdemeanor cases must be paid by the clerk of district court to the State department of revenue for deposit into the state general fund. (MCA 46-18-235) These collections are remitted to the State in Section 2 of the County Collection Report to the Department of Revenue on a line captioned “District Court Fines, Assessments, Payments and Forfeitures” (BARS Fund No. 7466). Also remitted to the State on this line are (1) the costs of impaneling a jury assessed against any party in a civil action (MCA 3-15-205), and (2) forfeitures of bail posted in felony cases.

MCA 46-9-511

**Exceptions:** Exceptions to the above general disposition rule are as follows:

**Note:** If required disbursement is, in part or in whole, to the State, these exceptions are reported on separate lines in Section 2 of the County Collection Report to the Department of Revenue.

Court costs assessed against a convicted defendant, per MCA 46-18-232, may include costs of jury service that were previously reimbursed by the State through the District Court Reimbursement Program. Although these costs are deposited in the state general fund, they are remitted to the State on a separate line captioned “Criminal Jury Reimbursement”. (BARS Fund No. 7448)

MCA 3-5-901(2)

Deleted effective April 22, 2021: Violations of laws relating to outfitters and guides – **50% to the county general fund** and 50% to the State for deposit in the state special revenue fund for the use of the Board of Outfitters. (BARS Fund No. 7449)

MCA 37-47-344

Drug violations of Title 45, Chapters 9 & 10, MCA - to the drug forfeiture account maintained for the law enforcement agency that made the arrest from which the conviction and fine arose. **If the county sheriff or city/town law enforcement made the arrest, the fine is deposited to the county or city/town drug forfeiture fund, respectively.** If state law enforcement officials made the arrest, the fine is deposited in an account in the state special revenue fund to the credit of the department of justice, to be used for enforcement of drug laws. (BARS Fund No. 7450, if State arrest)

MCA 46-18-235, MCA 44-12-213

Violation of tax and registration requirements for off-highway vehicles - to the State to be deposited to the state general fund. Although these fines are deposited in the state general fund,

they are remitted to the State on a separate line captioned “FWP OHV Registration Fine – ATV Restitution Fine”. (BARS Fund No. 7454)  
MCA 23-2-807

Failure to pay the registration fee on boats and other watercraft - **50% to the county general fund** and 50% to the State to be credited to the motorboat state special revenue fund for use by the Department of Fish, Wildlife and Parks in the enforcement of this part. (BARS Fund No. 7455)  
MCA 23-2-519

FWP Underwater Diver Violation (and other violations of Title 23, Chapter 2, Part 5, MCA) – 100% to state general fund. Although these fines are deposited in the state general fund, they are remitted to the State on a separate line captioned “FWP Underwater Diver Fine”. (BARS Fund No. 7456)  
MCA 23-2-507

State Recreational Land Use Permit Fines pursuant to MCA 77-1-801 - to the State for deposit in the state general fund. Although these fines are deposited in the state general fund, they are remitted to the State on a separate line captioned “State Lands Use Permit Fine”. (BARS Fund No. 7457)  
MCA 87-1-601(8)

Possession of Dangerous Drugs – a mandatory fine equal to 35% of drug market value. Note: This fine is in addition to other fines for drug possession as provided in 46-18-231 - 100% to state general fund. Although these fines are deposited in the state general fund, they are remitted to the State on a separate line captioned “Fines – Dangerous Drugs”. (BARS Fund No. 7459)  
MCA 45-9-130

Campground violations - 100% to state general fund. Although these fines are deposited in the state general fund, they are remitted to the State on a separate line captioned “Fines – Campgrounds, etc.” (BARS Fund No. 7460)  
MCA 50-52-105

Tobacco, alternative nicotine products, or vapor products possession or consumption by persons under 18 - **to the county general fund**.  
MCA 45-5-637

Violations of Natural Streambed and Land Preservation Act – fines and penalties **deposited to a conservation district’s depository**, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601.  
MCA 75-7-123(4)

Violations of laws relating to the use of, and the operation of vehicles on state highways - If the apprehension or arrest was by a highway patrol officer, fines or forfeitures must be paid to the State for credit to the state general fund (see general distribution above). **If apprehension or arrest was made by a sheriff or deputy sheriff, fines and forfeitures must be deposited in**

**the county general fund, except for that portion of the fines otherwise allocated by law,** which must be paid into the appropriate accounts in the state special revenue fund.  
MCA 61-12-701

Violations of speed limits near schools – 50% of the fine must be distributed as provided in 46-18-235 (see general distribution, above), and **50% must be forwarded to the local authority that adopted the special speed limit.**  
MCA 61-8-726

**Additional Surcharge Upon Conviction or Forfeiture:** In all courts of original jurisdiction, upon an individual's criminal conviction or forfeiture of bond or bail, there must be imposed a charge that is in addition to other costs, fees, or fines. These amounts are as follows: (a) \$15 for each misdemeanor charge, (b) the greater of \$20 or 10% of the fine levied for each felony charge and (c) an additional \$50 for each misdemeanor and felony charge under Title 45 or Prior to January 1, 2022: 61-8-401, 61-8-406, or 61-8-411 Effective January 1, 2022: 61-8-1002.  
MCA 46-18-236(1)

The charges described above under (a) and (b) above are to be credited to the fund used to pay salaries of deputy county attorneys and other salaries in the office of the county attorney (generally, the county general fund). Any funds not needed for those salaries may be used for the payment of any other county salaries.  
MCA 46-18-236(6)(b)

The charge described above under (c) is to be distributed as follows:

- a. If the county operates or uses a victim and witness advocate program that provides the services specified in Title 40, Chapter 15, and Title 46, Chapter 24, MCA, \$49 of the \$50 shall be used for payment of the expenses of that program. (BARS Fund #2917) The other \$1 shall be deposited in the fund that pays the collecting court's administrative costs incurred in the collection of the charge (generally, the county general fund). (**Note:** This \$1 is not subject to allocation under 46-18-251, as discussed below.)
- b. If the county does not operate or use a victim and witness advocate program, \$49 of the \$50 collected under (c) above must be paid to the crime victims compensation and assistance program in the department of justice (BARS Fund No. 7699-2). The other \$1 is distributed as described above.

MCA 46-18-236(7)

**Court Information Technology Surcharge:** In courts of original jurisdiction, a \$10 surcharge (that is not a fee or fine and is in addition to other court costs, fees, or fines) is imposed: (a) on a defendant in criminal cases upon conviction or forfeiture of bond or bail; (b) on the initiating party in civil and probate cases, at the commencement of each action, proceeding, or filing; and (c) on each defendant or respondent in civil cases upon appearance. This surcharge is to be forwarded to the State (BARS Fund No. 7458) for deposit in the State general fund for state funding of court information technology.  
MCA 3-1-317

**Restitution Supervision Fee:** As a condition of restitution, an offender is required to pay the

cost of supervising the payment of restitution in an amount equal to 10% of the amount of restitution ordered, but not less than \$5. In felony cases, the offender pays this supervisory fee directly to the Department of Corrections. In misdemeanor cases, this payment is made to the court until the restitution is fully paid, and the court in turn disburses the money to the entity employing the supervisory individual.

MCA 46-18-241(2) & 245

**Note:** This payment is separate from the supervisory fee for probationers/parolees discussed in MCA 46-23-1031, which is not collected by district courts.

**Allocation of Payments:** If a misdemeanor offender is subject to any combination of fines, costs, restitution, charges, etc., 50% of all money collected from the defendant must be first applied to payment of restitution and the balance must be applied to these other payments, in the order listed in MCA 46-18-251. I.e., surcharge imposed pursuant to 46-18-236\*\* first, then supervisory fees imposed pursuant to 46-23-1031, then costs imposed pursuant to 46-18-232 or 46-18-233, then fines imposed pursuant to 46-18-231 or 46-18-233, and then any other payments ordered by the court.

**Note:** A felony offender shall pay restitution to the department of corrections, and other fines and costs must be paid to the court and allocated as provided here.

MCA 46-18-251(1) & (2)

\*\*The funds deposited under MCA 46-18-236(7)(b) (i.e., the \$1 deposited to the fund that pays the collecting court's administrative costs incurred in the collection of the surcharge discussed above) are not subject to this allocation.

The money applied to the payment of restitution must be paid in the following order: (a) to the victim; (b) to the State crime victims' compensation and assistance program; (c) to any other government agency that has compensated the victim; and (d) to any insurance company that has compensated the victim.

MCA 46-18-251(3)

## **COUNTY COMMISSIONERS**

The duties and powers of the board of county commissioners are set forth at MCA 7-4-2110 and in Title 7, Chapter 5, Part 21.

**Board Assistants:** The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. Such persons may be paid monthly, twice monthly, or every 2 weeks.

MCA 7-5-2107

**Number of Deputy Officers:** The board of county commissioners in each county is authorized to fix and determine the number of county deputy officers and to allow the several county

officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

MCA 7-4-2402

Each county officer, except a justice of the peace and the county assessor, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. (MCA 7-4-2401) However, a board of county commissioners has authority through control of the county budget to restrict the number of deputies hired by elected officials.

Therefore, a clerk of the district court may not employ a chief deputy or any other deputies without authorization of the board.

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**Conflict of Interest:** No member of the board must be directly or indirectly interested:

- a. in any property purchased for the use of the county;
- b. in any purchase or sale of property belonging to the county; or
- c. in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

MCA 7-5-2106

**Minutes of Commission Meetings:** The board of county commissioners shall cause to be kept a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings; (See CO09)

MCA 7-5-2129

**Official Bonds:** At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties on the bonds and their sufficiency. (See also 'Employee Bond Coverage' in CO01)

MCA 7-4-2213

**Printing Contract:** The board of county commissioners has jurisdiction and power to contract for the county printing and to provide books and stationery for county officers.

MCA 7-5-2105

## **OFFICE OF COUNTY CORONER**

The duties of the county coroner are set forth at MCA 7-4-2911.

The coroner must file with the clerk of the board of county commissioners a statement, in writing and verified by affidavit, showing (a) the amount of money or other property belonging to the estate of the deceased person that has come into the coroner's possession since the last statement, and (b) the disposition made of the property.



MCA 7-4-2914

## **JUSTICE COURT**

Each justice shall maintain a docket that details each proceeding or action, as specified in MCA 3-10-501, and shall keep an alphabetical index to the docket. The justice may elect to keep either electronic or paper records.

MCA 3-10-501 & 503

**FullCourt System:** FullCourt is a court case management system that has been deployed by the State Office of the Court Administrator in all but a handful of Limited Courts (where the Judge opted out of the program). The system allows the court to record all case specific information in a central database, e.g., parties, attorneys, actions, hearings, judgments, dispositions, etc. It also includes a financial component that supports the entry and distribution of all filing fees, fines and court ordered costs. Reports have been developed to comply with the statutorily referenced judgment book reports and case indexes.

**Fees Collected:** Each justice's court shall collect the fees prescribed by law for justices' courts and shall pay them to the county treasurer on or before the 10th day of each month. These fees must be deposited to the county general fund.

MCA 3-10-601(1), MCA 7-4-2511

Fees that shall be paid in every civil action in a justice's court:

- a. when a complaint is filed, the following fee to be paid by the plaintiff
  - i. \$30 beginning July 1, 2013,
  - ii. \$35 beginning July 1, 2014, and
  - iii. \$40 beginning July 1, 2015;
- b. \$20 to be paid by the defendant when the defendant appears;
- c. \$20 to be paid by the prevailing party when judgment is rendered, except there is no charge where judgment is entered by default;
- d. \$20 for all services in an action where judgment is rendered by confession;
- e. \$20 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

MCA 25-31-112

**Fines, Penalties, Forfeitures, and Costs:** All fines, penalties, forfeitures, and costs must be paid to the county treasurer on or before the 5th day of the following month\*\*, and the county treasurer shall distribute the money received as follows:

- (a) 50% to the department of revenue for deposit in the state general fund; and
- (b) 50% to the county general fund.

MCA 3-10-601(2) & (3), MCA 46-18-235

**\*\*Collection Agency:** The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court. The justice's court may assign the judgment to the private person or entity, who may institute a suit or other lawful

collection procedure and other postjudgment remedies in its own name. The justice's court may pay the private person or entity a reasonable fee for collecting the judgment. The fee incurred by the justice's court must be added to the judgment amount.

MCA 3-10-601(4)

**Remittance of Fines to State:** The 50% portion of these fines, etc., to be distributed to the State are remitted in Section 2 of the County Collection Report to the Department of Revenue on a line captioned "J.P. Fines/Forfeiture (50%)" (BARS Fund No. 7451).

**Exceptions to the general 50/50 distribution rule, above:**

**Note:** If required disbursement is, in part or in whole, to the State, these exceptions are reported on separate lines in Section 2 of the County Collection Report to the Department of Revenue.

Deleted effective April 22, 2021: Violations of laws relating to outfitters and guides – **50% to the county general fund** and 50% to the State for deposit in the state special revenue fund for the use of the Board of Outfitters. (BARS Fund No. 7449)

MCA 37-47-344

Drug violations of Title 45, Chapters 9 & 10, MCA - to the drug forfeiture account maintained for the law enforcement agency that made the arrest from which the conviction and fine arose. **If the county sheriff or city/town law enforcement made the arrest, the fine is deposited to the county or city/town drug forfeiture fund, respectively.** If state law enforcement officials made the arrest, the fine is deposited in an account in the state special revenue fund to the credit of the department of justice, to be used for enforcement of drug laws. (BARS Fund No. 7450, if State arrest)

MCA 3-10-601, MCA 44-12-213

Violation of tax and registration requirements for off-highway vehicles - to the State to be deposited to the state general fund. Although these fines are deposited in the state general fund, they are remitted to the State on a separate line captioned "FWP OHV Registration Fine – ATV Restitution Fine". (BARS Fund No. 7454)

MCA 23-2-807

Failure to pay the registration fee on boats and other watercraft - **50% to the county general fund** and 50% to the State to be credited to the motorboat state special revenue fund for use by the Department of Fish, Wildlife and Parks. (BARS Fund No. 7455)

MCA 23-2-519

State Recreational Land Use Permit Fines - to the State for deposit in the state general fund. Although these fines are deposited in the state general fund, they are remitted to the State on a separate line captioned "State Lands Use Permit Fine". (BARS Fund No. 7457)

MCA 87-1-601(7)

Tobacco, alternative nicotine products, or vapor products possession or consumption by persons under 18 - **to the county general fund.**

MCA 45-5-637

Violations of Natural Streambed and Land Preservation Act – fines and penalties **deposited to a conservation district’s depository**, unless otherwise directed by a justice court order.

MCA 3-10-601, MCA 75-7-123(4)

Gambling violations – to the State for deposit in the state general fund.

MCA 23-5-123

Violations of speed limits in a school zone – 50% of the fine must be distributed as provided in 3-10-601 (see general distribution, above), and 50% must be forwarded to the local authority that adopted the special speed limit.

MCA 61-8-726

**“Assessments” or “Contributions” Not Authorized In lieu of Fines:** In a particular felony case, a District Court ordered a defendant, as part of sentencing, to pay several “assessments” to community service entities in order to give back to society and to those who assist victims of crimes. However, MCA 46-18-235 provides specific disposition of fines and costs, and the Supreme Court found that a District Court may not redirect money collected from a defendant simply by labeling the money as an assessment instead of a fine. The assessments could not be considered restitution because the money was not payable to the victims themselves. Thus the assessment portion of the sentence was unauthorized and illegal.

Supreme Court cases *St. v. Krum*, (2007) & *St. v. Stephenson*, (2008)

**Additional Surcharge Upon Conviction or Forfeiture:** In all courts of original jurisdiction, upon an individual's criminal conviction or forfeiture of bond or bail, there must be imposed a charge that is in addition to other costs, fees, or fines. These amounts are as follows: (a) \$15 for each misdemeanor charge, (b) the greater of \$20 or 10% of the fine levied for each felony charge and (c) an additional \$50 for each misdemeanor and felony charge under Title 45 or MCA Prior to January 1, 2022: 61-8-401, 61-8-406, or 61-8-411 Effective January 1, 2022: 61-8-1002.

MCA 46-18-236(1)

The charges described above under (a) and (b) above are to be distributed 50% to the State for deposit in the state general fund, and 50% to the county general fund.

MCA 46-18-236(5), MCA 3-10-601(3)

The charge described above under (c) is to be distributed as follows:

- a. If the county operates or uses a victim and witness advocate program that provides the services specified in Title 40, Chapter 15, and Title 46, Chapter 24, MCA, \$49 of the \$50 shall be used for payment of the expenses of that program. (BARS Fund #2917) The other \$1 shall be deposited in the fund that pays the collecting court’s administrative costs incurred in the collection of the charge (generally, the county general fund). (**Note:** This \$1 is not subject to allocation under 46-18-251, as discussed below.)
- b. If the county does not operate or use a victim and witness advocate program, \$49 of the \$50 collected under (c) above must be paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113 (BARS Fund No. 7699-2). The other \$1 is distributed as described above.

MCA 46-18-236(7)

**Court Information Technology Surcharge:** In courts of original jurisdiction, a \$10 surcharge (that is not a fee or fine and is in addition to other court costs, fees, or fines) is imposed: (a) on a defendant in criminal cases upon conviction or forfeiture of bond or bail; (b) on the initiating party in civil and probate cases, at the commencement of each action, proceeding, or filing; and (c) on each defendant or respondent in civil cases upon appearance. This surcharge is to be forwarded to the State (BARS Fund No. 7458) for deposit in the State general fund for state funding of court information technology.

MCA 3-1-317

**Montana Law Enforcement Academy Surcharge:** In courts of limited jurisdiction, a \$10 surcharge that is in addition to any fine, court costs, or fees is imposed on a defendant who is convicted of criminal conduct or who forfeits bond. This surcharge is to be deposited in the court-appointed special advocate account established in 3-1-707.

MCA 3-1-318

**Allocation of Payments:** If a misdemeanor offender is subject to any combination of fines, costs, restitution, charges, etc., 50% of all money collected from the defendant must be first applied to payment of restitution and the balance must be applied to these other payments, in the order listed in MCA 46-18-251 (i.e., surcharge imposed pursuant to 46-18-236\*\* first, then supervisory fees imposed pursuant to 46-23-1031, then costs imposed pursuant to 46-18-232 or 46-18-233, then fines imposed pursuant to 46-18-231 or 46-18-233, and then any other payments ordered by the court.)

MCA 46-18-251(1) & (2)

**Note:** A felony offender shall pay restitution to the department of corrections, and other fines and costs must be paid to the court and allocated as provided here.

\*\*The funds deposited under MCA 46-18-236(7)(b) (i.e., the \$1 deposited to the fund that pays the collecting court's administrative costs incurred in the collection of the surcharge discussed above) are not subject to this allocation.

The money applied to the payment of restitution must be paid in the following order: (a) to the victim; (b) to the State crime victims compensation and assistance program; (c) to any other government agency that has compensated the victim; and (d) to any insurance company that has compensated the victim.

MCA 46-18-251(3)

## **OFFICE OF PUBLIC ADMINISTRATOR**

A public administrator shall take charge of estates of persons dying within the administrator's county as follows:

- (a) estates of decedents for which no administrators are appointed and that, in consequence of the lack of administration, are being wasted, uncared for, or lost;

- (b) estates of decedents who have no known heirs;
- (c) estates ordered into the administrator's hands by the court; and
- (d) estates upon which letters of administration have been issued to the administrator by the court.

MCA 72-15-102

**Inventory of Estates:** The public administrator shall make out and return an inventory of all estates taken into the administrator's possession and administer and account for the inventory, subject to the control and directions of the court. The court or judge may, at any time, order the public administrator to account for and deliver all the money of an estate in the public administrator's hands to the heirs or to the executors or administrators regularly appointed.

MCA 72-15-201 & 203

**Register Kept:** It is the duty of the public administrator to keep a book to be labeled "Register of Public Administrator" in which the public administrator shall enter: (1) the name of every deceased person on whose estate the public administrator administers; (2) the date of granting letters; (3) money received; (4) the property and its value; (5) proceeds of all sales of property; (6) the amount of public administrator's fees; (7) the expenses of administration; (8) the amount of the estate after all charges and expenses have been paid; (9) the disposition of the property on distribution; (10) the date of discharge of the administrator; and (11) other matters that may be necessary to give a full and complete history of each estate administered by the public administrator.

MCA 72-15-204

**Deposit with County Treasurer:** It is the duty of a public administrator, as soon as the public administrator receives money, to deposit with the county treasurer all money of the estate, and the money may be drawn upon the order of the personal representative, countersigned by a district judge when required for the purposes of administration.

MCA 72-15-205

**Monthly Report to the Clerk of District Court:** The public administrator is required to account and settle the public administrator's accounts relating to the care and disbursement of money or property belonging to estates with the clerk of district court on the first Monday of each month, and shall pay to the county treasurer any money remaining of an unclaimed estate.

MCA 72-15-206

**Annual Report to the Court:** The public administrator shall once each year make to the district court or a judge of the district court, under oath, a return of all estates of decedents that have come into the public administrator's hands stating the following:

- (a) the value of the estates;
- (b) the money that has come into the public administrator's hands from each estate;
- (c) what the public administrator has done with it;
- (d) the amount of fees and expenses incurred by the public administrator; and
- (e) the balance, if any, remaining in the public administrator's hands.

A copy of the return shall be posted in the office of the clerk of the district court of the county.  
MCA 72-15-207

See also below, for requirement of affidavit of no conflict of interest.

**Conflict of Interest:** The public administrator may not be interested in the expenditures of any kind made on account of any estate that the public administrator administers, and may not be associated, in business or otherwise, with anyone who is so interested. An affidavit to this effect must be attached to the annual report and publication made to the court (see above).

MCA 72-15-211

**Compensation:** The public administrator must receive and shall collect for the administrator's own use as full compensation for services under this chapter, the amount provided for in 72-3-631. (i.e., the public administrator receives no salary.):

MCA 72-15-301(1), MCA 7-4-2501

**Repealed: Compensation of attorney:** If the services of an attorney are engaged by the personal representative, the compensation of such attorney shall not exceed 1 1/2 times the compensation allowable to the personal representative. If the services of an attorney are engaged in connection with the termination of a life estate, the compensation allowed the attorney shall not exceed 3% of the value of the life estate if it is terminated in connection with a probate or joint tenancy termination. If a life estate is terminated separately, the attorney's compensation shall not exceed 3%, except that it shall not be less than \$100.

MCA 72-3-633(1) & (3)

**Final Settlement of Estate:** At the final settlement of an estate, if there are no heirs or other claimants, the district judge shall order the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer. The county treasurer shall remit the money to the Montana Department of Revenue (escheated estates).

MCA 72-15-212, MCA 72-14-204

## **OFFICE OF COUNTY SHERIFF**

The duties of the county sheriff are set forth at MCA 7-32-2121.

**Fees Set by Governing Body:** The county governing body may annually, by resolution pursuant to 7-6-4013, fix the fees of the sheriff. Fees for services provided under 7-32-2141 must be based upon the prevailing rate charged by private process servers in the county for similar services.

MCA 7-4-2525

**Fees Not Set by Governing Body:** If fees have not been set by the county governing body as discussed above, the sheriff shall receive the following:

- (a) for the service of summons and complaint on each defendant, \$5;
- (b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, \$5;

- (c) for levying and serving each writ of attachment of execution on real or personal property, \$5;
- (d) for service of attachment on the body or order of arrest on each defendant, \$5;
- (e) for the service of affidavit, order, and undertaking in claim and delivery, \$5;
- (f) for serving a subpoena, \$2.50 for each witness summoned;
- (g) for serving a writ of possession or restitution, \$5;
- (h) for trial of the right of property or damages, including all services except mileage, \$7;
- (i) for taking bond or undertaking in any case authorized by law, \$5;
- (j) for serving every notice, rule, or order, \$5 for each person served;
- (k) for a copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;
- (l) for posting notices and advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, \$5;
- (m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, \$7.50;
- (n) for cancellation or postponement of sheriff's sale, \$5.

MCA 7-32-2141(1)

**Fees for Keeper of Property:** For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, the sheriff shall receive such sum as the court or judge may order, not to exceed the actual expense incurred. No keeper must receive to exceed \$10 per day, and no keeper must be employed without an order of court or be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored or where there is no reasonable danger of loss.

MCA 7-32-2142

**Disposition of Fees:** All fees collected by the sheriff for the services provided above must be paid to the county treasurer as provided in 7-4-2511(1) (by the 10<sup>th</sup> day of each month), and the fees must be deposited by the county treasurer in the general fund of the county unless the county has instituted a public safety levy (MCA 7-6-2513), in which case the fees must be deposited in the public safety levy fund.

MCA 7-32-2141(2)

**Sheriff's Vehicle:** The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by the sheriff and may also pay for the operation and maintenance of those vehicles from county funds.

MCA 7-32-2125

Mileage may not be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county must be paid over to the county treasurer and deposited in the county general fund.

MCA 7-32-2143(2)

**Mileage and Expenses of Sheriff (When Sheriff's Vehicle is Not Provided and Maintained by the County):** While performing official duties, the sheriff shall receive actual expenses when traveling by railroad or airline. When traveling by other means, the sheriff will receive a mileage allowance (see MCA 2-18-503) for each mile traveled, and the actual expenses incurred by the sheriff. The mileage and expenses are in full payment for transporting and feeding the persons during transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more inmates, only one charge for mileage may be made. In lieu of charging mileage for the service of items of a civil nature, a sheriff may charge \$1 for the service of each item that requires a return or proof of service.

MCA 7-32-2143 to 2145, MCA 2-18-503

**Note:** See CO05 for discussion of MCA 2-18-503 and mileage allowance.

**Liability Insurance for Privately Owned Vehicles Used on Official Business:** The board of county commissioners shall provide liability insurance for not more than one privately owned vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance must be paid for from county funds and must provide full comprehensive and collision coverage plus minimum coverage of \$100,000 for each person for bodily injury and medical expenses, \$300,000 for all persons per accident, and \$50,000 per accident for property damage. This does not apply to counties furnishing motor vehicles to the sheriff's office pursuant to the provisions of 7-32-2125.

MCA 7-32-2126

## **OFFICE OF COUNTY SURVEYOR**

The duties of the county surveyor are set forth at MCA 7-4-2811 to 2815.

The board of county commissioners shall set the county surveyor's fees by resolution. **Note:** The county surveyor does not receive a salary, unless performing duties related to roads and bridges, as provided in MCA 7-4-2812.

MCA 7-4-2821

## **OFFICE OF COUNTY SUPERINTENDENT OF SCHOOLS**

**Powers and Duties:** The county superintendent has general supervision of the schools of the county and shall perform the following duties or acts:

- (a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;
- (b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;



- (c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;
- (d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203; (**Note:** Provisions of 20-9-203 no longer require that the county superintendent of schools file a copy of a district's audit report. Instead, the districts are required to file a copy of their audit report with the county superintendent of schools, OPI and the Department of Administration.)
- (e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;
- (f) keep a transcript of the district boundaries of the county;
- (g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;
- (h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;
- (i) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;
- (j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;
- (k) **Budgets:** complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;
- (l) **Annual Financial Report to OPI:** submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211; **Note:** MCA 20-9-213 contains a requirement that the school district trustees report annually to the county superintendent of schools, However, per OPI, the trustees now submit their annual TFS reports directly to OPI and to the county superintendent, and the superintendent only reviews the TFS. As such, some or all of these requirements of the county superintendent of schools *may* no longer be applicable.

MCA 20-3-205

The county superintendent of each county shall submit an annual report to the superintendent of public instruction on or before September 15, including the following: (1) the final budget information for each district of the county, as prescribed by 20-9-134(1); (2) the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501; (3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and (4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title.

MCA 20-3-209

- (m) **Monthly Apportionments:** monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212 (county-wide

- school levies), 20-9-347 (BASE funding), 20-10-145 (State transportation reimbursement), or 20-10-146 (County transportation reimbursement);
- (n) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(1)(c);
  - (o) **District General Fund Revenues:** calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;
  - (p) **Levy Requirements:** compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;
  - (q) **District Transportation:** file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;
  - (r) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;
  - (s) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;
  - (t) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;
  - (u) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;
  - (v) administer the oath of office to trustees without the receipt of pay for administering the oath;
  - (w) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;
  - (x) **Newspaper Publication:** within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the financial information (beginning- and end-of-year balances, total receipts and total expenditures) for the school fiscal year just ended for each district of the county;
  - (y) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

MCA 20-3-205

## **OFFICE OF COUNTY TREASURER**

Most duties of the county treasurer are noted in CO02 (Budgets), CO03 (Revenue) and CO04 (Cash and Investments), and other county compliance supplement sections. The compliance requirements noted here are those that are unique to the office and that are not located in other

compliance supplement sections. Duties of the county treasurer pertaining to school district moneys are further detailed in SD03 – Cash and Investments.

**General Duties:** The county treasurer shall:

- (1) receive all money belonging to the county and all other money directed to be paid to the treasurer by law, safely keep the money, apply and pay the money out, and account for the money as required by law;
- (2) keep an account of the receipt and expenditures of the money in books provided for the purpose, in which must be entered:
  - a. the amount and the time when, from whom, and on what account all money was received;
  - b. the amount and time when, to whom, and on what account all disbursements were made;
- (3) keep books so that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;
- (4) disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

MCA 7-6-2111

**General Duties:** The county treasurer shall:

- a. make a detailed monthly report to the governing body of the county of all receipts, disbursements, debt, and other proceedings of the treasurer's office;
- b. receive, disburse, and serve as the custodian of all public money;
- c. provide for accountability of all local government cash receipts and for deposits and investments of all departments, offices, and boards;
- d. pay out, in the order registered, all warrants presented for payment when there are funds in the treasury to pay the warrants; and
- e. require periodic departmental reports of money receipts and their disposition on forms that the designated county or municipal treasurer prescribes.

MCA 7-6-612(2)(a) & (3)

**Monthly & Annual Settlement of Accounts:** The treasurer shall settle accounts relating to the collection, care, and disbursement of public revenue with the county clerk on the first Monday of each month. For the purpose of making the settlements, the treasurer shall make out a statement, under oath, of the amount of money or other property received prior to the period of the settlement, the sources of the money or property, and the amount of payments or disbursements and to whom, with the amount remaining on hand. The treasurer shall make a full settlement of all accounts with the county clerk, annually on the first Monday of January and in the presence of the county commissioners, who have control of the accounts.

MCA 7-6-2115

**Fees:** The county treasurer shall receive the sum of \$25 plus actual costs incurred for making and acknowledging a deed for property sold for delinquent taxes.

MCA 7-6-2131

**Reporting to State:**

See CO03 for the source and distribution of common receipts, including motor vehicles fees/taxes.

MCA 15-1-504

By the 20<sup>th</sup> day of each month, the county treasurer shall remit to the **Department of Revenue** all money belonging to the state that was collected by the county treasurer during the preceding month, accompanied by a detailed report in a form required by the Department of Revenue.

MCA 15-1-504(1)

By the 20<sup>th</sup> day of each month, the county treasurer shall remit to the **Department of Justice** all state money that was collected by the county treasurer due to motor vehicle, vessel, and snowmobile transactions during the preceding month. The remittance must be accompanied by a detailed report upon a form prescribed by the Department of Justice.

MCA 15-1-504(3)

**Year-End Report:** By June 20 of each year, the county treasurer shall remit to the Department of Revenue an estimate of all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. By July 15, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

MCA 15-1-504(2)

**Late Charge:** The Department of Revenue may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

MCA 15-1-504(3)

**Responsibilities for School Monies.** The county treasurer:

Must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by OPI.

MCA 20-9-212(1)

A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including: (a) the basic county tax for elementary equalization; (b) the basic county tax for high school equalization; (c) the county tax in support of the transportation schedules; (d) the county tax in support of the elementary and high school district retirement obligations; and (e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners. The county treasurer shall invest the money received from these taxes within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for these purposes.

MCA 20-9-212(1) & (12)

Shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund.  
MCA 20-9-212(3)

Shall pay all warrants properly drawn on the county or district school money.  
MCA 20-9-212(4)

Must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

MCA 20-9-212(5)

Shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2605 and 7-6-2606.  
MCA 20-9-212(8)

Shall, each month, give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance.  
MCA 20-9-212(10)

**Investment of School Money:** When directed by the trustees of a district, the county treasurer shall invest the money of the district within 3 working days of the direction. Permissible investments are specified in 20-9-213(4).  
MCA 20-9-212(9) & (12)

Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.  
MCA 20-9-212(12)

**Allowable Investments of School Money:** See SD03-Cash and Investments for a detailed discussion regarding allowable investments of School District money. School Districts may either direct the county to invest district money or may directly invest district money in (1) eligible securities, as identified in 7-6-202, (2) savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, (3) a repurchase agreement that meets the criteria provided for in 7-6-213, (4) the state unified investment program (STIP) established in Title 17, chapter 6, (5) a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet these requirements, or (6) an investment account(s) as described in MCA 20-9-235.  
MCA 20-9-213(4) & 235

**Revenue Received for Joint School District:** The county treasurer shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;  
MCA 20-9-212(6)

## **BOARDS IN GENERAL**

A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law.  
MCA 7-1-201(1)

**Resolution:** The resolution creating an administrative board, district, or commission must: (a) specify the number of administrative board, district, or commission members; (b) specify the terms of the members; (c) specify whether members are entitled to mileage, per diem, expenses, and salary; (d) specify any special qualifications for membership in addition to those established by law; (e) grant the administrative board, district, or commission all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the department or district; and (f) contain, if applicable, budgeting and accounting requirements for which the administrative board, district, or commission is accountable to the county commissioners. If authorized by resolution, an administrative board, district, or commission may employ personnel.  
MCA 7-1-201(1), (2)(c), & (16)

An administrative board, district, or commission may not: (a) pledge the credit of the county or impose a tax unless specifically authorized by state law, and (b) sue or be sued independently of the local government unless authorized by state law.  
MCA 7-1-201(2) & (4)

**Members of Boards:** Members must be appointed by the county commissioners, and the commissioners shall maintain a register of appointments (see detail to be included in register at MCA 7-1-201(6)).

**Note:** Subsection 3 also provides that members may be made elective.

There must be a minimum of 3 members, and there must be an odd number of members. Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, or as provided in 7-11-1010, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners. A person may be removed from an administrative board, district, or commission for cause by the county commissioners or as provided by resolution.  
MCA 7-1-201(5) to (8) & (15)

An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member, and shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

MCA 7-1-201(12) & (13)

If a municipality creates a special district in accordance with Title 7, chapter 11, part 10 (Special Districts – Creation and Governance)\*\*\*, the governing body of the municipality shall comply with this section (i.e., 7-1-201) if the governing body chooses to have the special district governed by a separate board.

MCA 7-1-201(15)

\*\*\* A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body. If the special district is governed by a separate board, the board must be established in accordance with MCA 7-1-201 through 7-1-204, except as provided in 7-11-1010, and specific powers and duties granted to the board and those specifically withheld must be stated. The governing body may grant additional powers to the board. The governing body has ultimate authority under this subsection.

MCA 7-11-1021

**Creation of New Boards:** In addition to the following, a county may create administrative boards, districts, and commissions that are not otherwise provided for by law:

- (a) county building commission;
- (b) cemetery districts;
- (c) county fair commission;
- (d) mosquito control board;
- (e) museum board;
- (f) board of park commissioners;
- (g) road district;
- (h) rodent control board;
- (i) solid waste district;
- (j) television district;
- (k) weed management district.

MCA 7-1-202

**County Commissioners to Assume Duties:** If the minimum number of qualified persons is not available for membership on an administrative board, district, or commission, the county commissioners may by resolution, at a public meeting, assume the duties of the administrative board, district, or commission and may act as that board, district, or commission with the same powers and duties as that board, district, or commission. County commissioners acting in this capacity may not receive any compensation in addition to their compensation as county commissioners.

MCA 7-1-203

**Board minutes.** An administrative board, district, or commission created under 7-1-201 through 7-1-203 shall submit the minutes of its proceedings within 30 days after the minutes have been

approved by that body for electronic storage and retention in accordance with the provisions of Title 2, chapter 6, part 12. The administrative board, district, or commission shall submit the minutes for electronic storage to the county clerk and recorder of each county within the jurisdiction of the administrative board, district, or commission.

MCA 7-1-204

## **AIRPORT BOARDS**

**Acquisition and Establishment of Airports:** Counties, cities, and towns may, either individually or by the joint action of a county and one or more of the cities and towns within the county, acquire land for airport purposes. The local governments may, either individually or jointly, use the land to establish, construct, own, control, lease, equip, improve, operate, and regulate airports for the use of airplanes and other aircraft. A multijurisdictional airport is not required to be located, in whole or in part, within the limits of each subdivision participating in the joint venture.

MCA 67-10-102

**Creation of Board:** The county, city, or town may create a board or body from the residents of the county, city, town, or joint subdivision of the state and may confer upon the board or body the jurisdiction for the improvement, equipment, maintenance, and operation of the airport. The board of county commissioners, the city or town council, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of the airport or may authorize the board or body to do so, subject to the approval of the appointing power before the fees or charges may take effect. All expenses are a charge against the county, city, or town, or when acting jointly, against the joint subdivision of the state and must be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

MCA 67-10-202, 204 to 206

**Joint Fund:** For the purpose of providing a joint board with moneys for necessary expenditures, a joint fund shall be created and maintained into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state, or other contributions or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in 67-10-205(2).

MCA 67-10-206

The total expenditures to be made by the joint board for any purpose in any calendar year must be determined by a budget approved by the governing bodies of its constituent public agencies. Property, the cost of which is in excess of sums fixed by the joint agreement or allotted in the annual budget, may not be acquired by the joint board without the approval of the governing bodies of its constituent public agencies. Eminent domain proceedings and disposal of property



may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board.

MCA 67-10-205(2)

**Tax levy and Indebtedness:** Subject to 15-10-420, the county commissioners or the city or town council may each year assess and levy a tax on the taxable value of all taxable property in the county, city, or town for airports and ports. In the event of a jointly established airport or port, the county commissioners and the city or town council or councils involved shall determine in advance the levy necessary for those purposes and the proportion that each political subdivision joining in the venture is required to pay. If the levy is insufficient, the commissioners and councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition has been submitted to the qualified electors and approved by a majority vote.

MCA 67-10-402(1) to (3)

**Reserve Fund:** For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if: (a) the reserve is approved by the governing bodies during the normal budgeting procedure; (b) the necessity to resurface or improve runways by overlays or similar methods periodically is based upon competent engineering estimates; and (c) the funds are expended at least within each 10-year period.

MCA 67-10-402(4) & (5)

## **LIBRARY BOARDS**

This section of the Compliance Supplement relates to public libraries established by counties or cities and does not relate to Library Districts. State law related to Library Districts is found at Title 22, Chapter 1, Part 7.

**Creation of Public Library:** A public library may be established in any county or city in any of the following ways: (1) The governing body of any county or city may pass and enter upon its minutes a resolution to the effect that a free public library is established. (2) A public library may be established by a petition that is signed by not less than 10% of the resident taxpayers and that is filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which it may by resolution establish a public library. (3) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors at the next general election the question of whether a free public library is to be established. If the petition specifically asks that a special election be called and the petition is signed by 35% of the resident freeholders, then the governing body shall immediately set a date for a special election. The special election must be held in conjunction with a regular or primary election.

MCA 22-1-303

**Board of Trustees – Appointment, Term & Compensation:** Upon the establishment of a public library, the presiding officer of the board of county commissioners shall appoint a board of trustees for the county library. The library board must consist of five trustees. Not more than one member of the governing body may be, at any one time, a member of the board. Trustees shall serve for 5-year terms and may not serve more than two full terms in succession.  
MCA 22-1-308

Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.  
MCA 22-1-308(3)

**Board of Trustees – Powers & Duties:** The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

- (a) adopt bylaws and rules;
- (b) establish and locate a library and may establish branches as deemed necessary;
- (c) have the power to contract, and to pay out or receive funds to pay costs of such contracts;
- (d) have the power to acquire, to own and hold, and to sell, exchange or otherwise disposal of real and personal property;
- (e) pay necessary expenses of members of the library staff when on business of the library;
- (f) prepare an annual budget, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.
- (g) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement, and shall also submit an annual report to the state library.
- (h) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.
- (i) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

MCA 22-1-309

**Chief Librarian & Other Personnel:** The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.  
MCA 22-1-310

**Library Trustees Independent of County Control:** County library trustees have direct responsibility for administering county libraries in a manner largely independent of city or county control. Even though library employees may be considered city or county employees for

certain purposes, the library trustees' express authority to fix such employees' compensation prohibits County Commissioners from establishing a different wage level. A Board of County Commissioners may not modify the decision of county library trustees concerning wage and salary amounts for library employees, may not modify an annual library budget adopted by the county library trustees, and may not refuse, within statutory millage limits, to levy some or all of the property taxes necessary to satisfy an annual budget adopted by the county library trustees. AGO #91, Vol. 41, See also AGO #3, Vol. 48

**Financing - Tax Levy or Bonds:** Subject to 15-10-420, the governing body of a city or county that has established a public library may levy a tax in the amount necessary to maintain adequate public library service. The governing body of a city or county may by resolution submit the question of imposing a tax levy to a vote of the qualified electors as provided in 15-10-425 OR upon a petition signed by not less than 5% of the resident taxpayers requesting an election for the purpose of imposing a mill levy, the governing body shall submit to a vote of the qualified electors, as provided in 15-10-425, the question of imposing the mill levy.  
MCA 22-1-304(1) & (2)

Bonds may be issued by the governing body for the following purposes:

- (a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;
- (b) buying a bookmobile or bookmobiles; and
- (c) funding a judgment against the library.

MCA 22-1-304(5)

**Public Library Fund:** The proceeds of the tax constitute a separate fund called the public library fund (BARS Fund #2220) and may not be used for any purpose except those of the public library. Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.  
MCA 22-1-304(3) & (4)

**Library Depreciation Reserve Fund:** The governing body of any city or county may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year.

MCA 22-1-305 & 306

**Joint City-County Library:** A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties. Expenses of a joint library must be apportioned between or among the county and cities on the basis agreed upon in the contract. The treasurer of the county or of a participating city within the county, as provided in the contract, has custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to the designated treasurer all

money collected for the joint city-county library. The contract must provide for the disposition of property upon dissolution of the joint city-county library.

MCA 22-1-316

## **BOARD OF PARK COMMISSIONERS**

**Authorization:** There may be created in each county a board of park commissioners subject to the provisions of 7-1-201 through 7-1-203 (see Boards in General above).

MCA 7-16-2301

**County Park Superintendent:** The board may employ a park superintendent, who may also be the secretary of the park board and who shall attend each regular meeting of the board and report as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities. The duties of the superintendent must be of a managerial capacity.

MCA 7-16-2312

**Rules and Ordinances:** A county park board has the power and duty (a) to make rules necessary to protect and promote the improvement of land and facilities under the care and control of the board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places; (b) to make rules for the use of land and facilities by the public; and (c) to provide penalties for the violation of the rules. These rules have the force of resolutions of the county commissioners.

The county governing body, by the adoption of an ordinance, may (a) provide that violations of specific rules adopted by the board constitute criminal offenses; and (b) authorize a county park board to employ a county park warden to enforce park rules and ordinances. A county park warden is not a peace officer, and the park warden's law enforcement powers are limited to issuing citations charging violations of park ordinances and rules.

MCA 7-16-2322

**Powers of Park Board:** A county park board:

Has the power to lease lands owned by the county, heretofore acquired for parks, which are not advisable to improve as parks – the term of lease shall be no longer than 5 years, and shall be no longer than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

MCA 7-16-2323

May employ and discharge workers, laborers, engineers, foresters, and others and fix their compensation.

MCA 7-16-2325(1)(a)

May enter into contracts, as provided in 7-16-2325(2) & (3).

MCA 7-16-2325(1)(b), (2), & (3)

May contract indebtedness on behalf of a county, upon the credit of the county. The total amount of indebtedness authorized to be contracted in any form, including existing indebtedness, may not at any time exceed 0.79% of the total assessed value of taxable property. Bonds may not be issued for the purchase of lands and improving the land for any purpose until the proposition has been approved by the voters.

MCA 7-16-2327

**Sale, Lease or Exchange of Lands:** A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under chapter 8, part 25 (Classification and Alternative Management of County Lands), and only if the following steps are taken:

- (a) compile an inventory of all public parks and playgrounds within the county;
- (b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;
- (c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;
- (d) publish notice as provided in 7-1-2121 of intention to sell, lease, or dispose of the park or playground lands, giving the people of the county opportunity to be heard regarding the action;
- (e) if the land is within an incorporated city or town, secure the approval of the governing body for the action; and
- (f) comply with any other applicable requirements under chapter 8, part 25.

MCA 7-16-2324

A county park board may not sell county park property. However, a board of county commissioners may sell land that has been dedicated to the public for park purposes in accordance with procedures set out in 7-16-2324.

AGO #38, Vol. 36

**No Authority to Levy Tax:** A county park board does not have the authority to levy a special tax for park purposes.

AGO #49, Vol. 40

However, MCA 7-16-2102 provides authorization for the board of county commissioners to levy such a tax.

**Park Fund Maintained:** All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund.

MCA 7-16-2328

**Revenue from Sale Exchange or Disposal of Lands:** Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes must be paid into the park fund and used in the manner prescribed in 76-3-621 for cash received in lieu of dedication.

MCA 7-16-2324(4)

**Purpose for Expenditures:** A county park board may expend its funds only for the improvement of any parkland to which the county holds legal title. However, Montana law does not require a county park board to develop every parcel of parkland or any particular parcel of parkland.

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**Allowance of Claims:** At its first regular meeting each month, and after an itemized account of a claim has been filed in the office of the secretary of the board, the board of park commissioners shall audit and allow all just claims against the county that were incurred by the board. An order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of \$25 may not be passed or adopted except by a yea and nay vote, which must be recorded in full in the minutes of the secretary.

MCA 7-16-2330

**Disbursement of money:** All money paid out by the park commissioners must be by warrant drawn upon the county treasury, which may be signed by the secretary and countersigned by the president of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners, authorized payments may be made by warrant drawn upon the county treasury, signed by the presiding officer of the board of county commissioners and countersigned by the county clerk and recorder.

MCA 7-16-2331

## **WEED BOARDS**

**District & Board Established:** A weed management district shall be formed in every county of this state and shall include all the land within the boundaries of the county, except that a weed management district may include more than one county through agreement of the commissioners of the affected counties. The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

MCA 7-22-2102 & 2103

The powers and duties of the district weed board are set forth at MCA 7-22-2109 & 2113.

**Minutes.** The board administering and operating the district shall submit the minutes of its proceedings for electronic storage as provided in 7-1-204.

MCA 7-22-2113

**Weed Management Plan:** Before a district applies to the state for state or federal funding, the district shall provide the Montana Department of Agriculture with a weed management plan, as provided in 7-22-2121, and with a copy of the resolution creating the board. A district's weed management plan must be updated and submitted to the Department every 2 years. The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the district. The board may establish special

management zones within the district. The management criteria in such zones may be more or less stringent than the general management criteria for the district.

MCA 7-22-2120 & 2121

**Billing for Weed Control:**

The weed board may seek a court order to enter upon the infested parcels of the landowner's property if attempts to achieve voluntary compliance have been exhausted (See notification and other requirements at MCA 7-22-2131 to 7-22-2133). The board may institute appropriate noxious weed control measures, as detailed in 7-22-2134(1). After instituting these measures, the board shall submit a copy of the bill to the county clerk and recorder and, by certified mail, to the landowner that (a) covers the costs of the weed control measures; (b) contains a penalty of 25% of the total cost incurred; (c) itemizes the costs; and (d) specifies that payment is due within 30 days.

MCA 7-22-2134

When the penalty is collected, it must be credited to the noxious weed fund created under 7-22-2141 (BARS Fund #2140).

**Unpaid Bill as Tax Liability:** Unless the sum to be repaid by the person billed is repaid on or before the date due, the county clerk shall certify the amount thereof, with the description of the land to be charged, and shall enter the same on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such charges are collected, they shall be credited to the noxious weed fund.

MCA 7-22-2148

**Noxious Weed Fund:** The commissioners of each county shall create a noxious weed management fund, to be designated the "noxious weed fund" (BARS Fund #2140). This fund shall be kept separate and distinct by the county treasurer.

MCA 7-22-2141

**Funding Sources:** The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties as specified in 7-22-2109, by: (a) appropriating money from any source in an amount not less than \$100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property; and (b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

MCA 7-22-2142(1)

**Monies Deposited to Fund:** The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund. Any proceeds from work or herbicide sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

MCA 7-22-2142(2) & (3)

**Special Management Zone Tax:** The commissioners may impose a tax for weed control within a special management zone. The special management zone boundaries and amount of tax must first be approved by a majority of the voters within the special management zone.

MCA 7-22-2142(5)

**Expenditures from Noxious Weed Fund:** The noxious weed fund must be expended by the commissioners at the time and in the manner as is recommended by the board to secure the control of noxious weeds. Warrants upon the fund must be drawn by the board. Warrants may not be drawn except upon claims duly itemized by the claimant, except payroll claims that must be itemized and certified by the board, and each claim must be presented to the commissioners for approval before the warrant is countersigned by the commissioners.

MCA 7-22-2145

**Cost of Weed Control Program:** Based on the board's recommendations, the commissioners shall determine and fix the cost of the control of noxious weeds in the district, whether the same be performed by the individual landowners or by the board.

MCA 7-22-2143

The total cost of weed control within the district must be paid from the noxious weed fund. The cost of controlling weeds growing along the right-of-way of a state or federal highway must, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund. Costs attributed to other lands within the district must be assessed to and collected from the responsible person as set forth in 7-22-2134 (above).

MCA 7-22-2144

**Cost-Share Program:** The commissioners, upon recommendation of the board, may establish a cost-share program for the control of noxious weeds. The board shall develop rules and procedures for the administration of the cost-share program. Any person may voluntarily enter into a cost-share agreement for the management of noxious weeds on the person's property. The agreement must specify: (i) costs that must be paid from the noxious weed fund; (ii) costs that must be paid by the person; (iii) a location-specific weed management plan that must be followed by the person; and (iv) reporting requirements of the person to the board.

MCA 7-22-2146

Under 7-22-2146 the County Commissioners and District Weed Board are not required to have an agreement to assist landowners with weed control. Landowners in counties without such agreements are obliged to carry the entire financial burden of the weed program. Therefore, in counties in which the full financial responsibility for a weed control program lies with the landowners, the county may recover the full amount of the cost incurred in noxious weed control if the weed board must institute weed control measures pursuant to 7-22-2134 without the consent of the owner.

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**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**TAX SALES, REDEMPTIONS, & TAX DEEDS**

REVISION JANUARY 2022

REF: CO15

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## **PERSONAL PROPERTY TAX SALES**

**Procedure for Delinquent Personal Property Taxes:** The county treasurer shall, after a personal property tax becomes delinquent, either:

- (a) give the board of county commissioners a list of delinquent personal property taxpayers and the taxes due. The board may order the county treasurer to verify the list under oath and to send a copy of the list to the State Department of Revenue for collection under Title 17, Chapter 4, Part 1, MCA, or
- (b) levy upon and take into possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell the property in the same manner as property is sold on execution by the sheriff.

MCA 15-16-119(3) & (7)

The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.

MCA 15-16-119(4)

**Personal Property Tax as a Lien:** The tax due on personal property is a prior lien upon the personal property that has precedence over any other lien, claim, or demand upon the personal property. Except as provided below, the tax on personal property is also a lien upon the real property of the owner of the personal property on and after January 1 of each year.

MCA 15-16-402(1)

The taxes on personal property based on a taxable value up to and including \$10,000 are a first and prior lien upon the real property of the owner of the personal property. Taxes on personal property based on a taxable value in excess of \$10,000 are a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon the real property at or before the time the personal property tax attached to the real property, has filed a notice as provided in MCA 15-16-402(3).

MCA 15-16-402(2)

### **Personal Property Tax Lien Sale:**

The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. The provisions of both 15-17-911 and 15-16-119 (see above) apply to a seizure and sale of personal property.

MCA 15-17-911(1) & (2)

The sale of personal property must be conducted at public auction, conducted under the provisions of 25-13-701(1)(b), and noticed as a treasurer's sale of personal property seized for taxes. The county treasurer shall charge \$25 or a fee set by the county commissioners, plus the cost, as defined in 15-17-121, of the collection of delinquent personal property taxes. The cost must be assessed against the delinquent taxpayer and is in addition to any sheriff's fees, mileage,

and costs, as provided in 7-32-2141 and 7-32-2143, which also must be assessed against the delinquent taxpayer.

MCA 15-17-911(3) & (4)

**Proceeds of Sale:** After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full. Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it.

MCA 15-17-911(6)

The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed has been seized and sold. One copy of the order of cancellation must be filed with the county clerk and recorder and one copy with the county treasurer. (See CO10-Property Taxes)

MCA 15-17-911(9)

## **REAL PROPERTY TAX LIEN SALES**

**Real Property Tax as a Lien:** Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year.

MCA 15-16-403

### **Public Notice:**

(1) The county treasurer shall publish or post a notice of a pending attachment of a tax lien. The notice must include:

(a) the specific date on which the county will attach a property tax lien to property on which the taxes are delinquent.

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the specified date, a tax lien will be attached and may be assigned to a third party.

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

- (a) the name and address of the person to whom the delinquent taxes are assessed;
  - (b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs;
  - and
  - (c) a statement that penalties, interest, and costs will be added to delinquent taxes.
- (3) The notice must be given as provided in 7-1-2121. The notice must be first published or posted on or before the last Monday in June.
- (4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Effective April 8, 2021: 15-23-708 or 15-24-1701 to 15-24-1703.
- MCA 15-17-122

The county treasurer shall file a copy of the notice with the county clerk, accompanied by an affidavit stating the name of the newspaper and its address of publication, and the dates the notice was published (or the locations and date of the posting).

MCA 15-17-123

#### **Tax Lien Sale Certificate:**

Attachment of tax lien and preparation of tax lien certificate.

- (1)(a) The county treasurer shall attach a tax lien no later than the first working day in August to properties on which the taxes are delinquent and for which proper notification was given as provided in 15-17-122 and subsection (4) of this section. Upon attachment of a tax lien, the county is the possessor of the tax lien unless the tax lien is assigned pursuant to 15-17-323. (b) The county treasurer may not attach a tax lien to a property on which taxes are delinquent but for which proper notice was not given. (2) After attaching a tax lien, the county treasurer shall prepare a tax lien certificate that must contain:
- (a) the date on which the property taxes became delinquent;
  - (b) the date on which a property tax lien was attached to the property;
  - (c) the name and address of record of the person to whom the taxes were assessed;
  - (d) a description of the property on which the taxes were assessed;
  - (e) a separate listing of the amount of the delinquent taxes, penalties, interest, and costs;
  - (f) a statement that the tax lien certificate represents a lien on the property that may lead to the issuance of a tax deed for the property
  - (g) a statement specifying the date on which the county or an assignee will be entitled to a tax deed; and
  - (h) an identification number corresponding to the tax lien certificate.
- (3) The tax lien certificate must be signed by the county treasurer. A copy of the tax lien certificate must be filed by the treasurer in the office of the county clerk.
- MCA 15-17-125

Although a county treasurer may not require delinquent SID assessments to be paid in addition to the sale price of tax deed land, the county treasurer must apply the sale proceeds of the land to delinquent SID assessments as provided in MCA 7-8-2306.

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**County as Purchaser:**

It would be illogical to consider a county the purchaser of a tax sale certificate, without payment of delinquent taxes and assessments, when no other purchaser comes forward at a tax sale, and then to place responsibility on the county for payment of future assessments. Therefore, when a county becomes a purchaser of a tax certificate pursuant to this section, the county is not required to pay special assessments levied against the property after the tax sale.

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**Disposition of Tax Sale Proceeds:** All money received from the tax lien sale, other than costs, must be credited to the various funds to which the taxes would have originally been distributed and in the same proportion as the original taxes would have been distributed. Any money received for costs or any money remaining after crediting the separate funds must be deposited to the county general fund.

MCA 15-17-322

**Tax Lien Sale When Municipality Collects Municipal Tax:** In a city or town that collects its own taxes or special assessments when any taxes or assessments become delinquent, a tax lien sale may not be held by the city or town unless the city treasurer or town clerk, within 10 working days after the date on which the taxes or assessments become delinquent, certifies the delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated. Upon receipt of the certificate, the county treasurer shall enter the delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes shall include all city and town delinquent taxes and assessments. There may be only one sale for each piece of property. The sale must cover the aggregate of the city, town, county, and state taxes and special assessments, including penalties, interest, and costs provided by law.

MCA 7-6-4423

**ASSIGNMENT OF RIGHTS****Assignment by County:**

1(a) A tax lien certificate or other official record in which the county is listed as the possessor of the tax lien must be assigned by the county treasurer to any person who, after providing proof of mail notice to the person to whom the property was assessed, as required by subsection (5), pays to the county the amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency. (b) The county treasurer shall develop a policy for assigning a tax lien when more than one person seeks the assignment and provides proof of mail notice to the person to whom the property was assessed. The county treasurer shall seek input from the county clerk and recorder and the county attorney in developing the policy.

(5) Prior to making a payment under subsection (1), a person shall send notice of the proposed payment, by certified mail, to the person to whom the property was assessed. The notice must have been mailed at least 2 weeks prior to the date of the payment but not earlier than August 15 and not more than 60 days prior to purchasing the assignment. The person making the payment shall provide proof of the mailing.

### MCA 15-17-323(1) & (5)

**Assignment Certificate:** This assignment must be in the form of an "assignment certificate", the details of which are presented at MCA 15-17-323(2)(a). A copy of this assignment certificate must be mailed to the person to whom the taxes were assessed.

### MCA 15-17-323(2)

**Assignment by Other Than County:** An assignment made by an assignee of the county or by a previous assignee may be made for any consideration whatsoever. Such an assignment is legal and binding only upon filing with the county treasurer a statement that the assignee's interest in the property has been assigned. The county treasurer must file a copy of the statement with the clerk and recorder.

### MCA 15-17-323(3)

#### **Assignment to Municipality:**

(1) At the request of a municipality and if the tax lien has not been assigned pursuant to 15-17-323, the county treasurer shall assign the tax lien on a property with delinquent special assessments to the municipality upon payment of costs and delinquent taxes, excluding delinquent assessments. The municipality is not required to pay penalties or interest.

(2) The county treasurer:

- (a) shall deliver to the treasurer of the municipality a copy of the tax lien certificate, which must be filed by the treasurer of the municipality;
- (b) may not charge a fee for an assignment certificate when a tax lien is assigned to a municipality; and
- (c) shall make an entry "sold to the municipality" on the property tax record and be credited with the delinquent taxes.

(3) Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable.

### MCA 15-17-317

## **REDEMPTIONS**

**Time for Redemption of Lien:** Redemption of a property tax lien may be made by the owner (or other individuals or interested parties as defined in MCA 15-18-111(1) & (3)) by the first working day in August, 3 years after attachment of the tax lien.

### MCA 15-18-111(1)

For property subdivided as a residential or commercial lot upon which special improvement district assessments or rural special improvement district assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien may be made by the owner (or other individuals or interested parties as defined in MCA 15-18-111(1) & (3)) by the first working day in August, 2 years after attachment of the tax lien.

### MCA 15-18-111(2)

**Redemption Payment:** To redeem the property from the property tax lien, the redemptioner shall pay in addition to the amount of the property tax lien, including penalties, interest, and costs, the subsequent taxes assessed against the property, with penalty and interest, at the rate established for delinquent taxes in 15-16-102.

MCA 15-18-112(2)

**Partial Redemption Payment:** The property tax lien may also be redeemed for a particular tax year Deleted effective February 23, 2021: by a partial payment of that tax year as provided in MCA 15-16-102(5)\*\*, if (1) the property tax lien for the year in which the partial payment is made is owned by the county, and (2) the tax deed has not been issued pursuant to MCA 15-18-211 or 15-18-220.

MCA 15-18-112(4)

\*\*A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full tax years if taxes currently due for the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of the current year's taxes is not a redemption of the property tax lien for any delinquent tax year.

MCA 15-16-102(5)

**Certificate of Redemption:**

The county treasurer shall execute a certificate of redemption to be filed with the clerk and recorder upon payment to the county treasurer of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or the person's agent; and distribution of the redemption proceeds pursuant to 15-18-114.

MCA 15-18-113(1)

**Distribution of Redemption Proceeds – County as Purchaser:** When the county is in possession of a tax lien that is redeemed, the money received from the redemption (including penalties and interest but not costs) must be distributed to the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

MCA 15-18-114(1)

**Distribution of Redemption Proceeds – Other Than County as Purchaser:**

When an assignee is in possession of a tax lien that is redeemed, the county treasurer shall distribute to the person listed as the assignee on the assignment certificate provided for in 15-17-323, the amount the assignee paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 (subsequent taxes), plus interest as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the assignee must be distributed pursuant to subsection (1). The distribution must be made by the county treasurer to the assignee at the address listed on the assignment certificate within 30 days of redemption. If the money distributed to the assignee is returned unopened to the county treasurer, the treasurer shall give notice as provided in 7-1-2121 stating that the county treasurer has the money, that the money will be held for a period of 1 year

from the date of publication, and that if the money is not claimed within 1 year, the assignee relinquishes all claim to the money and the money must be deposited to the general fund.  
MCA 15-18-114(2)

**Accounting of Redemption Moneys:** The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed. **Note:** A redemption ledger in some form should be maintained. In addition, a general ledger custodial fund for redemptions (BARS Fund No. 7150 - Redemptions) should be maintained.  
MCA 15-18-114(4)

### **TAX DEEDS (Assignees)**

**Application for tax deed fee:** If a property tax lien attached to the property provided for in subsection (1)(b) is not redeemed in the time allowed under 15-18-111, the assignee may file an application after the redemption period has expired with the county treasurer for a tax deed for the property. The deed application must contain the same information as is required in 15-18-211(1). The county treasurer shall charge the assignee a \$25 application fee. The fee must be deposited in the county general fund.  
MCA 15-18-219(1)(a)

**Sale at public auction:** (1) Upon receipt of an application for a tax deed pursuant to 15-18-219, the county treasurer shall hold a public auction in the county in which the property is located within 60 days of receipt of the application. The county treasurer shall publish notice of the auction as provided in 7-1-2121 that includes the date, time, and location of the auction, the legal description of the property, the deposit requirement, and the minimum opening bid. The auction must be held during the regular office hours of the county treasurer.

(3) (a) The county treasurer shall sell the property to the high bidder for the purchase price bid Effective February 23, 2021: plus auction costs incurred by the county treasurer. Except as provided in subsection (3)(b), the high bidder shall post with the county treasurer a nonrefundable deposit of 5% of the bid or \$200, whichever is greater, at the time of sale. The deposit is applied to the sale price at the time of full payment. Notice of the deposit requirement must be posted at the auction site, and the county treasurer may require bidders to show their ability to post the deposit. The county treasurer may refuse to recognize the bid of a person who has previously bid and refused, for any reason, to honor the bid.

(b) If the assignee is the high bidder, the assignee shall pay to the county treasurer auction costs and any amounts included in the opening bid and not already paid, including filing fees, tax deed fees, and one-half of the most recent assessed value of the land and of the dwelling. Prior to February 23, 2021: The amounts paid with the tax deed application must be subtracted from the deposit required in subsection (3)(a). Effective February 23, 2021: If the assignee does not make full payment within 24 hours, excluding weekends and legal holidays, the county treasurer shall cancel the assignment and file with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-225.



- (c) Prior to February 23, 2021: If full payment of the purchase price and recording fees is not made within 24 hours of the sale, excluding weekends and legal holidays, the county treasurer shall cancel all bids, notice the auction as provided in subsection (5), and pay costs of the resale from the deposit. Any funds remaining from the deposit must be applied to the opening bid. Effective February 23, 2021: If full payment of the purchase price and auction costs is not made within 24 hours of the sale, excluding weekends and legal holidays, by a high bidder who is not the assignee, the county treasurer shall cancel the high bid and allow the next highest bidder to purchase the tax deed for the amount bid. If the next highest bidder does not make full payment of the purchase price and the auction costs within 24 hours, excluding weekends and legal holidays, of notification by the county treasurer, the county treasurer shall repeat the process and contact the next highest bidder until the purchase price and auction costs are paid or until there are no bidders remaining. If no bidder pays the purchase price and auction costs, the county treasurer shall cancel the assignment and file with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-225.
- (d) Effective February 23, 2021: If there are no bidders at the auction, the county treasurer shall cancel the assignment and file with the county clerk and recorder a notice of cancellation on a form provided for in 15-18-225.

(6) An auction required pursuant to this section may be conducted electronically.

MCA 15-18-220(1), (3), & (6)

**Distribution of tax deed auction proceeds.** The county treasurer shall distribute the proceeds of a tax deed auction pursuant to 15-18-220 as provided in this section. If the tax deed is purchased by a person other than the Prior to February 23, 2021: person who applied for the tax deed Effective February 23, 2021: assignee, the county treasurer shall pay to the Prior to February 23, 2021: applicant for the tax deed Effective February 23, 2021: assignee: (a) the amount paid for the assignment of the tax Prior to February 23, 2021: deed Effective February 23, 2021: lein, including delinquent taxes, penalties, interest, and costs; and (b) all amounts paid pursuant to 15-18-219(2) Deleted effective February 23, 2021: plus interest at the rate of 1.5% per month for the period from the month after the date of the application for the tax deed through the month of the sale.

MCA 15-18-221(1) & (2)

Except as provided in 15-18-219 and subsection (3) of this section, if the property tax lien is not redeemed in the time allowed under 15-18-111, the county treasurer shall grant the assignee a tax deed for the property. The deed must contain the same information as is required in a tax lien certificate under 15-17-125 and an assignment certificate under 15-17-323, except the description of the property must be the full legal description.

A tax deed issued under MCA Title 15, Chapter 18, conveys to the grantee absolute title to the property described in the deed as of the date of the tax deed, except as noted in 15-18-214.

MCA 15-18-211(1) & 214

If either a county or a municipality takes a tax deed to property pursuant to 15-18-211, the granting of the tax deed extinguishes the lien created by any special assessment against the property that becomes payable *prior* to the issuance of the deed but leaves unaffected any lien created by a special assessment that first becomes payable *after* issuance of the deed.

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**Fee Charged:** The county treasurer shall charge the assignee \$25 for making the deed plus all actual costs incurred by the county in giving the notice or assisting an assignee in giving the notice required in 15-18-212. The fee must be deposited in the county general fund.  
MCA 15-18-211(2)

**Resolution Required for Tax Deed to County:** If no assignment has been made, the county treasurer may not issue a tax deed to the county unless the board of county commissioners, by resolution, directs the treasurer to issue a tax deed.  
MCA 15-18-211(3)

**Notice to Be Given:** Between May 1 and May 30 of the year in which the redemption period expires: (a) for each property for which the county attached a tax lien and has not assigned the tax lien, the county treasurer shall notify the parties that a tax deed may be issued, or (b) for each property other than property provided for in 15-18-219(1)(b) for which the county attached a tax lien and assigned the tax lien pursuant to 15-17-323, the assignee shall notify the parties that a tax deed will be issued to the assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period. This notice must be made by certified mail, return receipt requested.  
MCA 15-18-212(1) and (4)

If the county is the possessor of the tax lien, and the county commissioners do not direct the county treasurer to issue a tax deed during the period described above (60 days prior to and not more than 60 days following the expiration of the redemption period), but the commissioners subsequently do direct the county treasurer to issue a tax deed, the treasurer and recorder shall provide notification of the pending tax deed issuance. This notification is to be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed. An exception to this is if the commissioners direct the treasurer to issue the tax deed within 6 months after giving the notice described in 15-18-212(1). In that case, additional notice need not be given.  
MCA 15-18-212(2)

The county treasurer shall notify the assignee of the obligation to give notice between January 1 and January 31 of the year in which the redemption period expires. The notice of obligation **Prior to February 23, 2021: may Effective February 23, 2021: must** be sent by certified mail, return receipt request, to the assignee at the address contained on the assignment certificate provided for in 15-17-323. If assignee again fails to give the required notice, the treasurer shall cancel the property tax lien evidenced by the tax lien certificate and the assignment certificate. Upon cancellation of the property tax lien, the treasurer shall file with the clerk and recorder a notice of cancellation, on a form provided for in 15-18-217.  
MCA 15-18-212(3)

The person required to give notice shall, within the period described in subsection (1) give notice as provided in 7-1-2121 and in the form required by 15-18-215.  
MCA 15-18-212(5)

**Interest and Costs Accrue:** The amount of interest and costs continues to accrue until the date of redemption. The total amount of interest and costs that must be paid for redemption must be calculated by the county treasurer as of the date of payment.

MCA 15-18-212(6)

**Proof of Notice Given:** Proof of notice given must be filed with the county clerk and recorder within 30 days of mailing or publishing the notice. If the county is the possessor of the tax lien, the proof of notice must be filed before issuance of the tax deed.

MCA 15-18-212(7)

Effective February 23, 2021: Prior to issuance of a tax deed for residential property with an owner-occupied dwelling and after all other notice requirements have been met, the sheriff, the county treasurer, or a designee of the sheriff or county treasurer shall make reasonable attempts to personally deliver a copy of the notice that was sent by certified mail to the owner-occupant of the property for the purpose of discussing the consequences of a failure to respond. If personal delivery attempts are unsuccessful, the sheriff, county treasurer, or designee shall attempt all reasonable means of informing the owner-occupant of the consequences of a failure to respond, including but not limited to a phone call to the owner-occupant or a relative of the owner-occupant.

MCA 15-18-212(8)

## **SALE/LEASE OF TAX DEED LAND (County Owned)**

**Options for Disposition of Tax Deed Lands:** Within 6 months of acquiring land by tax deed, the board of county commissioners must enter an order to:

- a. Sell the land at public auction. The sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale. If bids are not received, the board shall order another auction sale of the land within 6 months, and may, if required by the circumstances, redetermine the sales price of the land. In the period of time between these two auction sales, the land is retained by the county. If no bid is received at this second auction sale, the board may (a) dispose of the land as provided in Title 7, chapter 8, part 25, or Effective October 1, 2021: (b) at any time after the auction, sell the property by auction and accept as the purchase price an amount less than the appraised value of the property.
- b. Donate the land to a municipality, with the consent of the municipality, if the land is within the incorporated boundaries of the municipality.
- c. Donate the land or sell the land at reduced price to a corporation for the purpose of constructing:
  - (1) a multifamily housing development operated by the corporation for low-income housing,
  - (2) single-family houses to be sold to low-income persons, or

- (3) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation to pursue purposes specified in its articles of incorporation, including the sale, lease, rental, or other use of the donated land and improvements. Land that is transferred pursuant to this subsection (c) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.
- d. Retain the land for the county.

MCA 7-8-2301

**Notice to Be Given:** Notice of the sale, donation, or retention of tax-deed lands must be given by publication as provided in MCA 7-1-2121. The notice must include a list of all lands to be sold, donated, or retained, the fair market value of the lands as determined and fixed by the Department of Revenue, and the time and place of sale, donation, or retention. If the land is to be sold, the sales price as determined under MCA 7-8-2301 must be stated in the notice.

MCA 7-8-2302

**Repurchase of Property:** At any time up to 24 hours before the time fixed for the first offering of property for sale or the time fixed for the donation or retention of the property, the taxpayer or the taxpayer's successor in interest or legal representative may repurchase the property from the county. The property may be repurchased, subject to the reservations provided for in MCA 7-8-2305 (see below), by payment to the county of the full amount of the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in MCA 15-16-102, from the date of the tax deed to the date of repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.

MCA 7-8-2303

**Terms of Sale of Tax-Deed Land:** Sale of tax-deed land must be made for cash, or on terms approved by the board of county commissioners. If the sale is made on terms, at least 20% of the purchase price must be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at a rate established by the county commissioners. If a sale is made on terms, the chairman of the board shall execute a contract containing the terms that are provided by a contract approved by the Department of Revenue.

MCA 7-8-2304

**Distribution of Proceeds of Sale:** Upon sale of the property, the proceeds must be distributed as follows:

1. to the general fund for reimbursement of expenditures made in connection with procurement of the tax deed and holding of the sale;
2. if there is any money remaining after the payment of the amount specified above, and the remainder is:
  - a. in excess of the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty and interest, then as much of the remaining proceeds must be credited to each fund or purpose as each fund or purpose

would have received had the taxes been paid before becoming delinquent, and all excess must be credited to the county general fund; or

- b. less in amount than the aggregate amount of all taxes and assessments accrued against the property for all funds and purposes, without penalty or interest, the proceeds must be prorated between the funds and purposes in the proportion that the amount of taxes and assessments accrued against the property for each fund or purpose bears to the aggregate amount of taxes and assessments accrued against the property for all funds and purposes.

MCA 7-8-2306(1)

**Royalty Interest Retained:** The county may reserve up to 6 ¼% royalty interest in the oil, gas, other hydrocarbons, and minerals produced from any tax-deed lands it sells. Any money received from the royalty interest must be credited to the county general fund, except that no more than 50% may be allocated to the road fund.

MCA 7-8-2305 & 2306(2)

Although a county treasurer may not require delinquent SID assessments to be paid in addition to the sale price of tax deed land, the county treasurer must apply the sale proceeds of the land to delinquent SID assessments as provided in MCA 7-8-2306.

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**Proceeds from Lease of Tax-Deed Property:** Upon lease of tax-deed property, the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, must be apportioned on the current year's levy and must be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands.

MCA 7-8-2306(3)



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**  
**COUNTY COLLECTIONS & REMITTANCES**

REVISION JANUARY 2022

REF: CO16

**Contents**

GENERAL INFORMATION ..... 1

**GENERAL INFORMATION**

County treasurers collect revenues/receipts for many other governmental entities as well as the county government itself. These include incorporated cities and towns, school districts, special purpose districts, and the State of Montana. Revenues for some entities, such as incorporated cities and towns and the State of Montana, are remitted by the county treasurer to the entities monthly. For other entities such as school districts and some types of special purpose districts, the county treasurers retain the money in custodial funds and act as the banker for the entities. For example, MCA 7-33-2105 requires that “all money received by the [Rural Fire District] trustees must be deposited in the county treasurer's office and credited to the fire district.”

Some of these moneys received by the county treasurers are recorded partially as revenue to the county, with the balance being receipted into one or more custodial funds for distribution to various taxing units, including the State. An example of these types of receipts would be property taxes. Property taxes and certain other receipts are distributed based on the mill levies of the county and other taxing units for which the county treasurer collects taxes. That portion received as a result of tax levies imposed by the county for county funds (general, road, bridge, poor, etc.) is recorded as revenue to the county in the appropriate fund. Other taxes collected as a result of tax levies imposed by other taxing units or by the county for other taxing units is not considered revenue to the county and is receipted into various custodial funds. Examples would be taxes imposed by incorporated cities and towns, school districts, the State university system, and the county for mandatory school equalization levies.

Another example would be certain fines collected by justice court which, by statute, are distributed 50% to the county general fund and 50% to the State. The 50% distributed to the county general fund would be recorded as revenue in that fund. The 50% required to be remitted to the State would be receipted into a custodial fund and remitted to the State monthly. It would not be recorded as revenue to the county. Other fees and license collections are treated similarly.

Other sources are not considered revenue to the county at all under generally accepted accounting principles. Examples would be grant or entitlement moneys received for a school district or special purpose district, as well as certain fines and permit fees that are distributed 100% to the State.

Moneys collected that are required by statute to be remitted to the State are initially credited to a designated custodial fund by the county treasurer. The Budgetary, Accounting and Reporting System (BARS) for Montana Cities, Towns and Counties has assigned specific fund numbers and names for the required custodial funds. The moneys in these funds are then required by statute to be remitted to the State monthly.

Although those moneys collected by the county treasurer for other governments, such as the State of Montana, are not recorded as revenue for the county under generally accepted accounting principles, they are received by the county, credited to funds maintained by the county, deposited in county bank accounts, and invested along with other county moneys. The receipt of these moneys by the county treasurer is required by state statute and the distribution of these moneys by the county treasurer must be made in the manner required by state statute.

MCA 2-7-505 requires the following: “When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of custodial funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.” The standard audit contract also contains this same provision (paragraph 4.C.(4)). As such, the auditor should perform sufficient testing of the receipt and distribution of these moneys to ensure that the county is complying with applicable laws and regulations.

Compliance supplement CO03 - Revenues/Receipts contains listings of the most common sources of revenues/receipts collected by counties, including receipts related to motor vehicles. These listings include collections recorded as GAAP revenues for the counties as well as other moneys that are collected by the counties for other governmental entities. These listings and the compliance requirements of CO03 should be used in testing for the counties’ compliance with laws relating to the collection and distribution of moneys collected by the counties.



# COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL GOVERNMENT ENTITIES SPECIAL DISTRICTS

REVISION JANUARY 2022

REF: CO17

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## **INTRODUCTION**

The 2009 Legislature enacted legislation (SB 57) that revised the laws relating to special districts. SB 57 established uniform standards for the creation, administration, and operation of special districts, and repealed specific provisions relating to many special districts.

The effective date of SB 57 is July 1, 2009. The Savings clause of the bill provides that the new legislation does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 2009. The Transition clause of the bill provides that a special district in existence on July 1, 2009, must comply with the new provisions upon (1) alteration of its boundaries or (2) a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on July 1, 2009, the proposal is subject to the dissolution provisions of the new law (MCA 7-11-1029). A special district in existence on July 1, 2009, is required to comply with the additional reporting provisions of the new law (MCA 7-11-1014) only upon alteration of its boundaries.

A special district in existence on July 1, 2009, continues in existence and remains subject to the provisions of the statutes under which it was created or established, as those statutes existed on June 30, 2009.

MCA 7-11-1004

**Note:** Specific statutes related to these special districts have been repealed, although any of these special district types in existence prior to July 1, 2009, may continue to apply provisions of the repealed sections until district boundaries are altered or there is a change in amount or method of assessment for the district, as discussed in the Introduction, above. See Table below for specific statutory authority for these districts that can be found in MCA prior to the 2009 Legislative Session.

## **GENERAL – DEFINITIONS**

"**Special district**" is defined as a unit of local government that is authorized by law to perform a single function or a limited number of functions.

MCA 7-11-1002(3)(a)

The term **includes but is not limited to** cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purpose not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement.

MCA 7-11-1002(3)(b)

The term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax

increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

MCA 7-11-1002(3)(c)

**Note:** Specific statutes related to these special districts are still applicable – these types of districts do NOT fall under this Part. See Table below.

**Governing body** is defined as the legislative authority of a local government – i.e., county commissioners or the city or town council or commission.

**Local government** is defined as a city, town, county, or consolidated city-county government or any combination of these acting jointly.

## **CREATION OF SPECIAL DISTRICT**

Authorization to create special districts:

The governing body may (1) create a special district by resolution Effective July 1, 2021: pursuant to 7-11-1007, 7-11-1008, and the provisions of 7-11-1009, if applicable; or (2) order a referendum on the creation of a special district as provided in 7-11-1011 Effective July 1, 2021: and the provisions of 7-11-1009, if applicable.

MCA 7-11-1003(1)(a)

Petitioners may initiate the creation of a special district, as provided in MCA 7-11-1003(2).

MCA 7-11-1003(1)(b)

## **CREATION OF DISTRICT - PETITION**

**Petition Signatures:** Upon receipt of a petition to institute the creation of a special district that is signed by at least Prior to July 1, 2021: 25% Effective July 1, 2021: 40% of the registered voters or by the owners of at least Prior to July 1, 2021: 25% Effective July 1, 2021: 40% of the real property within the boundary of the proposed special district and that is submitted to the clerk of the governing body, the governing body shall Prior to July 1, 2021: order a referendum on the creation of the special district pursuant to 7-11-1011 Effective July 1, 2021: commence proceedings to create a special district as provided in subsection (1)(a).

MCA 7-11-1003(2)(a)

Deleted effective July 1, 2021: Upon receipt of a petition to institute the creation of a special district that is signed by more than 50% of the registered voters or by the owners of more than 50% of the real property within the boundary of the proposed special district, the governing body shall conduct a public hearing pursuant to 7-11-1007. Following the hearing and if insufficient protests are made as provided in 7-11-1008, the governing body shall order the creation of the special district in accordance with 7-11-1013.

MCA 7-11-1003(2)(a)(ii)

Deleted effective July 1, 2021: If a proposed special district would be financed by a mill levy, a petition to institute the creation of the special district must be signed by at least 40% of the registered voters or at least 40% of the property taxpayers within the boundary of the proposed district.

MCA 7-11-1003(2)(b)

**Form of Petition:** The form of the petition may be prescribed by the governing body, and the clerk of the governing body shall verify the signatures on the petition, but the petition must:

- a. require the printed name of each signatory;
- b. specify whether the signatory is a property taxpayer or owner of real property within the proposed special district and either the street address or the legal description, whichever the signatory prefers, of that property];
- c. describe the type of special district being proposed and the general character of any proposed improvements and program to be administered within the special district;
- d. designate the method of financing any proposed improvements or maintenance program within the special district;
- e. include a general description of the areas to be included in the proposed special district; and
- f. specify whether the proposed special district would be administered by the governing body or an appointed or elected board.

MCA 7-11-1003(2)(b) & (c)

**Petition Accepted or Rejected:** Within 60 days of receipt of a petition to create a special district, the clerk of the governing body shall:

- a. certify that the petition is sufficient under the above provisions and present it to the governing body at its next meeting; or
- b. reject the petition if it is insufficient under the above provisions. A defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.

MCA 7-11-1003(3) & (4)

## **CREATION OF DISTRICT - DISTRICT BOUNDARIES**

The boundaries of the proposed special district must be mapped, clearly described, and made available to the public at the time of the publication of the notice of public hearing pursuant to 7-11-1007 before the district may be approved. The governing body or petitioners shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the boundaries for the proposed special district. The boundaries must follow property ownership, precinct, school district, municipal, and county lines as far as practical.

MCA 7-11-1006

## **CREATION OF DISTRICT - RESOLUTION AND PUBLIC HEARING**

The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution of intention may be based upon a decision of the governing body as provided in 7-11-1003(1)(a) or upon a petition that contains the required number of signatures as provided in 7-11-1003(1)(b).

MCA 7-11-1007(1)

The resolution must designate, Effective July 1, 2021: consistent with the requirements of 7-11-1009 and 7-11-1024:

- a. the proposed name of the special district;
- b. the necessity for the proposed special district;
- c. a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;
- d. the general character of any proposed improvements and the proposed location for the proposed program or improvements;
- e. the Prior to July 1, 2021: estimated cost and Effective July 1, 2021: maximum rate or amount of the initial proposed assessments or fees that would be imposed;
- f. the method of financing the proposed program or improvements;
- g. any requirements specifically applicable to the type of special district;
- h. whether the proposed special district would be administered by the governing body or an appointed or elected board; and
- i. the duration of the proposed special district.

MCA 7-11-1007(2)

**Public Notice:** The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 (Counties - See CO01-General Topics) or 7-1-4127 and 7-1-4129 (Cities & Towns - See CT01-General Topics), as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

MCA 7-11-1007(3)(a)

At the same time that notice is published, the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district.

MCA 7-11-1007(3)(b)

A copy of the notice must be mailed to each owner or purchaser under contract for deed of the property included on the list referred to above, as shown by the current property tax record maintained by the department of revenue for the county.

MCA 7-11-1007(3)(c)

## **CREATION OF DISTRICT - PROTEST PROCEDURES**

An owner of property that is liable to be assessed for the program or improvements in the proposed special district has 60 days from either the date of the first publication of the notice of passage of the resolution of intention or the date the protest form provided in subsection (2)(c) (see below) was sent to property owners, whichever is later, to make a written protest against the proposed program or improvements.

MCA 7-11-1008(1)

A property owner may register a written protest under either subsection (2)(b) or (2)(c). A property owner may register a written protest in any format in conformity with this section. The protest must identify the property in the district owned by the protestor by either its street address or its legal description, whichever the property owner prefers, be signed by a majority of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the protest the date of receipt.

MCA 7-11-1008(2)(a) & (b)

The governing body shall send each person referred to in 7-11-1007(3)(c) a protest form with space for any information required under subsection (2)(b) of this section, mailing instructions, and the date the form must be returned to the governing body. The form must allow a property owner to select either support for or opposition against the creation of the district. Only the forms returned with an indication of either support for or opposition against the creation of the district may be used, along with written protests submitted under subsection (2)(b), in determining whether sufficient protest has been filed to prevent further proceedings.

MCA 7-11-1008(2)(c)

For purposes of this section, "owner" means, as of the date a protest is filed, a record owner of fee simple title to the property or a contract buyer on file with the county clerk and recorder. The term does not include a tenant of or other holder of a leasehold interest in the property. An owner of property created as a condominium may protest pursuant to the provisions in 7-11-1027.

MCA 7-11-1008(3) & (4)

At the hearing provided for in 7-11-1007, the governing body shall consider all protests.

MCA 7-11-1008(5)(a)

If the protest is made by the owners of property in the proposed district to be assessed for:

- (i) 50% or more of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, further proceedings may not be taken by the governing body for at least 12 months; or
- (ii) more than 10% but less than 50% of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, and if the governing body decides to proceed with proposing the district, the governing body shall order a referendum in accordance with 7-11-1011.

MCA 7-11-1008(5)(b)

In determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a governmental entity must be considered the same as any other property in the district.

MCA 7-11-1008(5)(c)

The decision of the governing body is final and conclusive.

MCA 7-11-1008(5)(d)

## **JURISDICTIONWIDE SPECIAL DISTRICTS**

Effective July 1, 2021: (1) This section applies to a special district created under this part by resolution as allowed in 7-11-1007 and 7-11-1008 or by referendum as allowed in 7-11-1011 that encompasses the entire jurisdictional area of a local government as defined in 7-11-1002(2).

- (2) (a) If the governing body seeks to create a special district by resolution pursuant to 7-11-1007 and 7-11-1008, the governing body may not increase the total amount assessed by the district above the amount set forth in the resolution as required by 7-11-1007(2)(e) in a subsequent year by more than the lesser of the following calculated values:
- (i) the average of the total amount assessed by the district in each of the previous 5 years multiplied by the average rate of inflation since the inception of the district; or
  - (ii) the total amount assessed by the governing body in the year the district was created multiplied by the average rate of inflation since the inception of the district.
- (b) The rate of inflation referenced in subsections (2)(a)(i) and (2)(a)(ii) must be calculated using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.
- (3) (a) If the governing body seeks to create a special district by resolution and referendum pursuant to 7-11-1011, the resolution ordering the referendum must include, in addition to the items included in 7-11-1011, a detailed description of:
- (i) the estimated total cost of the programs, services, or improvements to be funded over the duration of the district;
  - (ii) whether the governing body anticipates bonding for improvements and the estimated principal amount of the bonds;
  - (iii) the estimated annual rate or amount of the proposed assessments or fees that would be imposed over the duration of the district; and
  - (iv) an estimate of the impact of the creation of the district on a property in the district, according to the method of assessment identified as required by 7-11-1011(2)(e).
- (b) The governing body may not exceed the amounts provided in subsection (3)(a) over the duration of the district without subsequent approval of the voters.
- (4) (a) Unless otherwise dissolved pursuant to this part or by the terms of the resolution creating the special district, a special district created by resolution pursuant to 7-11-1007 and 7-11-1008 and subject to the provisions of this section must dissolve 13 years after the date of the order creating the district as provided in 7-11-1013 or when any bonded indebtedness has been paid in full, whichever is later. The provisions of 7-11-1029(5)

through (8) apply to the dissolution of a special district as provided in this subsection (4)(a).

- (b) Prior to the dissolution of a special district, the governing body may extend the duration of the district by following the same procedures set forth in this section and the applicable provisions of 7-11-1003, 7-11-1007, 7-11-1008, and 7-11-1011.

MCA 7-11-1009

## **CREATION OF DISTRICT - REFERENDUM/ELECTION**

The governing body may order a referendum on the creation of the proposed special district. The resolution ordering the referendum must state, Effective July 1, 2021: consistent with the requirements of 7-11-1007, 7-11-1009, and 7-11-1024:

- a. the Deleted effective July 1, 2021: type and maximum rate Effective July 1, 2021: or amount of the initial proposed assessments or fees that would be imposed, Deleted effective July 1, 2021: consistent with the requirements of 7-11-1007(2)(e) and 7-11-1024;
- b. the type of activities proposed to be financed, including a general description of the program or improvements;
- c. a description of the areas included in the proposed special district;
- d. whether the proposed special district would be administered by the governing body or an appointed or elected board;
- e. Effective July 1, 2021: the method of financing the proposed program or improvements; and
- f. the duration of the proposed special district.

MCA 7-11-1011(1) & (2)

The election must be conducted in accordance with Title 13, chapter 1, part 5 . The proposition to be submitted to the electorate must read: "Shall the proposition to organize (name of proposed special district) be adopted?"

MCA 7-11-1011(3) & (4)

**Individuals Qualified to Vote:** An individual is entitled to vote on the proposition if the individual:

- a. is a registered elector of the state; and
- b. is a resident of or owner of taxable real property in the area subject to the proposed special district.

MCA 7-11-1011(5)

If the proposition is approved, the election administrator of each county shall:

- a. immediately file with the secretary of state a certificate stating that the proposition was adopted;
- b. record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and
- c. notify any municipalities lying within the boundaries of the special district.

MCA 7-11-1011(6)

## **CREATION OF DISTRICT – CERTIFICATE OF ESTABLISHMENT**

Upon receipt of the certificate referred to in 7-11-1011(6), the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county or counties in which the district is situated. When the certificate is issued, the district named in the certificate is established with all the rights, privileges, and powers set forth in 7-11-1021.

MCA 7-11-1012

## **ORDER CREATING DISTRICT**

The governing body shall create a special district and establish assessments or fees if the governing body finds that insufficient protests have been made in accordance with 7-11-1008 or if the eligible registered voters have approved a referendum as provided in 7-11-1011. To create a special district, the governing body shall issue an order or pass an ordinance or resolution in accordance with the resolution of intention introduced and passed by the governing body or in accordance with the terms of the referendum required under 7-11-1011. This must be done within 30 days of the end of the protest period or approval of the referendum.

MCA 7-11-1013(1) & (2)

If the governing body creates the special district of its own accord and without a referendum being held, a copy of the order, ordinance, or resolution creating the district, certified by the clerk of the governing body, must be delivered to the clerk and recorder of the county or counties in which the special district is situated and to the secretary of state, who shall issue a certificate of establishment in accordance with 7-11-1012.

MCA 7-11-1013(3)

## **REPORTING TO STATE DEPARTMENT OF REVENUE**

Within 60 days after the creation of a special district or by January 1 of the effective tax year, whichever occurs first, the governing body shall provide to the State Department of Revenue a:

- a. legal description of the special district;
- b. map of its boundaries;
- c. list of the property taxpayers or owners of real property within the special district's boundaries; and
- d. copy of the resolution establishing the special district, including any adopted method of assessment.

MCA 7-11-1014(1))

**Digital Information:** The State Library, in coordination with the Department of Revenue, governing bodies, and other appropriate entities, may develop standards, best practices, and



procedures for creating digital information to map special districts for land information purposes authorized in Title 90, chapter 1, part 4. If the governing body intends to submit any digital information to the Department of Revenue for this purpose, the governing body shall notify the Department as to the expected date of submission and submit the digital information in a manner prescribed by the State.

MCA 7-11-1014(3) & (4)

### **REPORTING TO LOCAL GOVERNMENT SERVICES (LGS)**

The governing body of each county or municipality shall notify the department of administration (LGS) in writing, on a form prescribed by LGS, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

MCA 7-6-611(3)

Each special purpose district shall obtain a permanent mailing address and notify LGS of the address and of any subsequent changes of the district's address.

MCA 7-6-611(4)

### **GOVERNANCE**

A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

MCA 7-11-1021(1)

**Governance by Board:** If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2 (See CT14 “Boards in General”), except as provided in 7-11-1010, and specific powers and duties granted to the board and those specifically withheld must be stated. A vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the governing body. The member appointed to fill the vacancy holds the office until a successor has been appointed and qualified. The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body. The governing body has ultimate authority under this subsection (2).

MCA 7-11-1021(2)

The entity chosen to administer the special district may:

- a. implement a program and order improvements for the special district designed to fulfill the purposes of the special district;
- b. directly related to the specific improvement or program;
- c. purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;

- d. cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;
- e. receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;
- f. construct, improve, and maintain new or existing facilities and buildings necessary to accomplish the purposes of the special district;
- g. provide grants to private, nonprofit entities as part of implementing an effective program;
- h. adopt a seal and alter it at the entity's pleasure;
- i. administer local ordinances as appropriate;
- j. establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and
- k. borrow money by the issuance of:
  - a. general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or
  - b. revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

MCA 7-11-1021(3)

**Budget Review & Approval:** If the special district is administered by a separate board, the board] shall submit annual budget and work plans to the governing body for review and approval.

MCA 7-11-1021(4)

**Minutes:** The board or governing body administering and operating the special district as provided by 7-11-1021 shall submit the minutes of its proceedings for electronic storage as provided in 7-1-204 unless:

- (1) the special district is operated by the governing body of a municipality; and
- (2) the governing body has designated an alternative place for the minutes to be recorded or maintained.

MCA 7-11-1030

**Eminent Domain:** The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.

MCA 7-11-1021(5)

## **MULTIPLE JURISDICTIONS – INTERLOCAL AGREEMENT**

A special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The interlocal agreement may determine whether the administrative body of the special district consists of the entire membership of all

governing bodies from the participating jurisdictions or representatives of each governing body or jurisdiction.

MCA 7-11-1022(1)

A special district created by a combination of local governments acting together may enlarge an existing service district, but may not supersede or void an existing contract, district, or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions. The local governments acting together may agree to alter an existing contract, district, or interlocal agreement as necessary.

MCA 7-11-1022(2)

The local governments shall proportionally share the ownership of real or personal property acquired by the district pursuant to their interlocal agreement.

MCA 7-11-1022(3)

### **ALTERATION OF BOUNDARIES**

Subject to subsections (2) and (3), the governing body may change the boundaries of any special district by resolution.

MCA 7-11-1023(1)

**Subsection (2):** The boundaries may be altered by petition after complying with the requirements for petitions as provided in 7-11-1003.

MCA 7-11-1023 (2)

**Subsection (3):** Alteration of special district boundaries is also subject to procedures for public notice, protest, referendum, certification, reporting, and establishment of assessment as provided in 7-11-1006 through 7-11-1008; 7-11-1011 through 7-11-1015 and 7-11-1024.

MCA 7-11-1023(3)

Changes made to the boundaries may not:

- a. occur more than once each year unless the governing body makes a special finding that an alteration is necessary;
- b. delete any portion of the area if the deletion will create an island of included or excluded lands;
- c. delete any portion of the area that is negatively contributing or may reasonably be expected to negatively contribute to environmental impacts that fall within the scope of the special district's program; and
- d. affect indebtedness existing at the time of the change.

MCA 7-11-1023(4)

## **FINANCING**

The governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to 7-11-1021. **Note:** For this purpose, "assessable area" means the portion of a lot or parcel of land that is benefited by the special district, which may be less than but may not exceed the actual area of the lot or parcel.

MCA 7-11-1024(1) & (2)

**Assessment Options:** The governing body shall assess the percentage of the cost of the program or improvements:

1. against the entire district as follows:
  - (a) each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places;
  - (b) if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel;
  - (c) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district;
  - (d) each lot or parcel of land may be assessed based on the lineal front footage of any part of the lot or parcel that is in the district and abuts the area to be improved or maintained;
  - (e) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; or
  - (f) each lot or parcel of land within the district may be assessed based on each family residential unit or one or more business units; or
  - (g) any combination of the assessment options above may be used for the special district as a whole; OR
2. based upon the character, kind, and quality of service for a residential or commercial unit, taking into consideration:
  - (a) the nature of the property or entity assessed;
  - (b) a calculated basis for the program or service, including volume or weight;
  - (c) the cost, incentives, or penalties applicable to the program or service practices; or
  - (d) any combination of these factors.

MCA 7-11-1024(3)

**Condominiums:** If property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

MCA 7-11-1024(4)

Effective July 1, 2021: A governing body may, by resolution, instruct the state or any applicable federal agency to designate a special district as the recipient of federal funds to be used for the costs and expenses of the special district. Federal funds designated to a specific county may be paid directly to a special district within the county.  
MCA 7-11-1024(5), MCA 17-3-202

## **NOTICE OF RESOLUTION FOR ASSESSMENT**

The governing body shall estimate, as near as practicable, the cost of each established special district annually by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values from the department of revenue.  
MCA 7-11-1025(1)

The governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements as provided in 7-6-4012 and 7-6-4013 (i.e., fee-based budgets and fees for services in the Local Government Budget Act).

If the entity chosen to administer the special district is the governing body, the governing body may not charge more than 15% of the annual fees or assessments collected to administer the special district.

The resolution levying the assessment must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed.

MCA 7-11-1025(2) & (3)

The resolution must be kept on file in the office of the clerk of the governing body. A notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment is on file in the clerk's office and subject to inspection, must be published as provided in 7-1-2121 (county) or 7-1-4127 (city/town). The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice.

MCA 7-11-1025(4) & (5)

The notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40 (Local Government Budget Act).

MCA 7-11-1025(6)

At the time set, the governing body shall meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment.

MCA 7-11-1025(7)

A copy of the resolution, certified by the clerk of the governing body, must be delivered to the State Department of Revenue by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values from the department of revenue.

MCA 7-11-1025(8)

When a resolution of assessment has been certified by the clerk of the local government, the county treasurer, the city treasurer, or the town clerk, as provided in 7-12-4182, shall collect the assessment in the same manner and at the same time as property taxes for general purposes are collected.

MCA 7-11-1026(1)

### **ALL MONEY HELD BY COUNTY/CITY TREASURER**

All money received by the special district, including interest and earnings accrued, must be deposited in an account held only for the special district by the office of the county treasurer, city treasurer, or town clerk.

MCA 7-11-1026(2)

### **PAYMENT OF ASSESSMENT UNDER PROTEST**

When an assessment made under this part is considered erroneous by the party whose property is charged or from whom the payment is demanded the person may, prior to the assessment becoming delinquent, file an appeal to the administrative board of the district; or pay the assessment or any part of the assessment considered to be erroneous under protest to the county treasurer, city treasurer, or town clerk, whoever is charged with collection of the assessment, and either file an appeal to the administrative board of the district or initiate action in court.

MCA 7-11-1027(1)

The party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment.

MCA 7-11-1027(2)

The assessment paid under protest must be held by the county treasurer, city treasurer, or town clerk until the determination of an action brought for the recovery of the assessment.

MCA 7-11-1027(3)

If the assessment considered to be unlawful pertains to property created as a condominium and the property is not solely a certain unit in the condominium, then the owner of the property

created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium. MCA 7-11-1027(4)

An owner of property created as a condominium may protest against the method of assessment or vote at an election of the special district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following:

- a. a writing identifying the condominium property;
- b. the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated;
- c. original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and
- d. a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment.

MCA 7-11-1027(5)

### **ASSESSMENTS AS LIENS**

An assessment made and levied to defray the cost and expenses of the program or improvements, together with any percentages imposed for delinquency and for cost of collection, constitutes a lien upon the property on which the assessment is made and levied from the date of the passage of the resolution levying the assessment. This lien may be extinguished only by payment of the assessment, with all penalties, costs, and interest, or by sale of the property as provided in subsection (2).

MCA 7-11-1028(1)

When the payment of an installment of an assessment becomes delinquent, all payments of subsequent installments of the assessment may, at the option of the governing body and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold in the same manner as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

MCA 7-11-1028(2)

### **DISSOLUTION OF DISTRICT**

**Resolution of Intention:** A special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for

creating the special district has been fulfilled and the special district is not needed in perpetuity. The governing body may pass a resolution of intention to dissolve a special district upon its own request or upon request of the separate board administering the special district.

MCA 7-11-1029(1) & (2)

**Notice Publication:** After the passage of the resolution (above), the clerk of the local government that established the special district shall publish a notice, as provided in 7-1-2121 (county) or 7-1-4127 (city/town), of the intention to dissolve the district.

- (a) The notice must specify the boundaries of the special district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution will be passed unless the clerk of the local government receives written protest in advance from the owners of property in the district who are assessed for:
  - (i) 50% or more of the cost of the program or improvements; or
  - (ii) more than 10% but less than 50% of the cost of the program or improvements.
- (b) If the governing body receives the protest as provided in subsection (4)(a)(i), further dissolution proceedings may not be taken by the governing body for at least 12 months.
- (c) If the governing body receives the protest as provided in subsection (4)(a)(ii), the governing body shall order a referendum on the dissolution in accordance with 7-11-1011.
- (d) In determining whether or not sufficient protests have been filed, property owned by a governmental entity must be considered the same as any other property in the district.
- (e) The decision of the governing body is final and conclusive.

MCA 7-11-1029(3) & (4)

**Notice to State:** If the special district is dissolved, the clerk of the local government shall immediately send written notice to:

- a. the secretary of state; and
- b. the State Department of Revenue, providing the same information required in 7-11-1014 when a district is created. The Department of Revenue and the State Library shall respond to the dissolution in the same manner as they respond to the creation of a district, as described in 7-11-1014.

MCA 7-11-1029(5)

**Satisfaction of Debts & Obligations:** The dissolution of a special district may not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution.

MCA 7-11-1029(6)

**Allocation of Assets Remaining:** Any assets remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be:

- a. deposited in the general fund of the local government;
- b. in the case of multiple local governments, divided in accordance with their interlocal agreement and deposited in the general fund of each local government; or
- c. transferred to a new special district that has been created to provide substantially the same service as provided by the dissolved special district.



If the remaining assets are derived from private grants or gifts that restrict the use of those funds, the funds must be returned to the grantor or donor.

MCA 7-11-1029(7) & (8)

**TABLE OF SPECIAL PURPOSE DISTRICTS SPECIFICALLY INCLUDED**

The following table includes a listing of all special districts that no longer have separate statutory authority, and that are **specifically included** in Title 7, Chapter 11, Part 10 – Special Districts – Creation and Governance. As discussed in the Introduction, above, these provisions are applicable to special districts that were in existence on July 1, 2009, until district boundaries or methods/amounts of financing are changed.

<p><b>Cemetery Districts</b> <b>Note:</b> MCA 7-35-2131 to 2150, related to a cemetery district permanent care &amp; improvement trust fund, were retained in MCA</p>	<p>MCA 7-35-2101 to 2125 <b>Special Provisions for:</b> Cemeteries – Local Government Generally: MCA 7-35-101 &amp; 102 Cemeteries – County: MCA 7-35-2201 &amp; 2202 <b>Note:</b> MCA 7-35-2205 [veterans’ cemeteries] was retained in the MCA Cemeteries – Cities: MCA 7-35-4101 to 4109 <b>Note:</b> MCA 7-35-4102 [vesting of title to cemetery grounds and restrictions on use] was retained in the MCA</p>
<p><b>County Park Districts</b></p>	<p>MCA 7-16-2401 to 2443</p>
<p><b>Park Maintenance Districts</b></p>	<p>MCA 7-12-4001</p>
<p><b>County Fairs (Commissions &amp; Districts)</b></p>	<p>MCA 7-21-3401 to 3458 <b>Note:</b> MCA 7-21-3411 [prohibition on use of appropriation or tax money on horseracing] was retained in the MCA</p>
<p><b>Solid Waste Management Districts</b></p>	<p>MCA 7-13-201 to 237</p>
<p><b>Joint Solid Waste Management Districts</b></p>	<p>MCA 7-13-301 to 311</p>
<p><b>Local Improvement Districts</b></p>	<p>MCA 7-14-2701 to 2763</p>
<p><b>Mosquito Control Districts</b></p>	<p>MCA 7-22-2401 to 2448</p>
<p><b>Multijurisdictional Service Districts</b></p>	<p>MCA 7-11-1101 to 1112 (See CO13) <b>Note:</b> MCA 7-11-1102 [services that may be provided] &amp; MCA 7-11-1112 [financing] were retained in the MCA</p>
<p><b>Road Improvement Districts</b></p>	<p>MCA 7-14-2901 to 2908</p>

<b>Rodent Control Districts</b>	MCA 7-22-2207 to 2233
<b>Television Districts</b>	MCA 7-13-2501 to 2542 <b>Note:</b> MCA 7-13-2511 [prohibition on operation of cable TV systems] & MCA 7-13-2512 [authorization for FM translator] were retained in the MCA

**TABLE OF SPECIAL PURPOSE DISTRICTS SPECIFICALLY EXCLUDED**

The following table includes a listing of all special districts that have separate statutory authority, and that are **specifically excluded** from Title 7, Chapter 11, Part 10 – Special Districts – Creation and Governance. The provisions for creation, operation and administration, and dissolution of these districts may not be consistent with the provisions in Title 7, Chapter 11, Part 10.

<b>Business Improvement Districts</b>	Title 7, Chapter 12, Part 11 (See CO12)
<b>Cattle Protective Districts</b>	Title 81, Chapter 6, Part 2
<b>Conservancy Districts</b>	Title 85, Chapter 9
<b>Conservation Districts</b>	Title 76, Chapter 15
<b>Water &amp; Sewer Districts</b>	Title 7, Chapter 13, Parts 22, 23, & 30 (Consolidated Local Government Water Supply & Sewer Districts)
<b>Planning and Zoning Districts</b>	Title 76, Chapter 2, Part 1 Planning Districts: MCA 76-1-403 & 404
<b>Drainage Districts</b>	Title 85, Chapter 8
<b>Grazing Districts</b>	Title 76, Chapter 16
<b>Hospital Districts</b>	Title 7, Chapter 34, Part 21
<b>Irrigation Districts</b>	Title 85, Chapter 7
<b>Library Districts</b>	Title 22, Chapter 1, Part 7
<b>Livestock Protective Committees</b>	Title 81, Chapter 6, Part 1
<b>Parking Districts</b>	Title 7, Chapter 14, Part 47 – for pedestrian malls, offstreet parking facilities, and parkings and parkways See also “Street Parking Districts” in Special Improvement Districts, below

<b>Resort Area Districts</b>	MCA 7-6-1532 to 1551
<b>Rural Improvement Districts (RID's)</b>	Title 7, Chapter 12, Part 21 <u>Special Provisions for:</u> Lighting Districts: Title 7, Chapter 12, Part 22 Sanitary & Storm Sewer Districts: Title 7, Chapter 12, Part 23
<b>Special Improvement Districts (SID's)</b>	Title 7, Chapter 12, Parts 41 & 42 <u>Special Provisions for:</u> Lighting Districts: Title 7, Chapter 12, Part 43 Street Maintenance Districts: Title 7, Chapter 12, Part 44 Street Parking Districts: Title 7, Chapter 12, Part 45 Fire Hydrant Maintenance Districts: Title 7, Chapter 12, Part 46
<b>Lighting Districts</b>	See Rural Improvement Districts and Special Improvement Districts, above
<b>Rural Fire Districts</b>	Title 7, Chapter 33, Part 21
<b>Street Maintenance Districts</b>	See Special Improvement Districts, above
<b>Tax Increment Financing Districts</b>	MCA 7-15-4282 to 4294 <u>Special Provisions for:</u> Urban Renewal: MCA 7-15-4201 to 4267 Targeted Economic Development District: MCA 7-15-4277 to 4280
<b>Urban Transportation Districts</b>	Title 7, Chapter 14, Part 2
<b>Water Conservation &amp; Flood Control Projects</b>	Title 76, Chapter 5, Part 11
<b>Weed Management Districts</b>	Title 7, Chapter 22, Part 21

**TABLE OF SPECIAL PURPOSE DISTRICTS NOT INCLUDED OR EXCLUDED**

The following table includes a listing of other districts, authorities, etc. that are **NOT specifically included in or excluded from** Title 7, Chapter 11, Part 10 – Special Districts – Creation and Governance.

<b>Airport Authorities</b>	Title 67, Chapter 11
<b>Commercial Property-Assessed Capital Enhancements Districts</b>	Effective January 1, 2022: MCA 90-4-1304 to 1308

<b>County Cultural, Social, and Recreational Facilities</b>	Title 7, Chapter 16, Part 21
<b>Fire Department Relief Associations (retirement)</b>	Title 19, Chapter 18
<b>Fire Service Areas</b>	Title 7, Chapter 33, Part 24
<b>Housing Authorities</b>	Title 7, Chapter 15, Part 21
<b>Local Water Quality Districts</b>	Title 7, Chapter 13, Part 45
<b>Metropolitan Sanitary and/or Storm Sewer Districts</b>	Title 7, Chapter 13, Part 1
<b>Parking Commissions</b>	Title 7, Chapter 14, Part 46
<b>Port Authorities</b>	Title 7, Chapter 14, Part 11
<b>Railway Authorities</b>	Title 7, Chapter 14, Part 16
<b>Regional Resource Authorities</b>	Title 7, Chapter 10
<b>Regional Water &amp; Wastewater Authorities</b>	Title 75, Chapter 6, Part 3
<b>Transportation Improvement Authorities</b>	Title 7, Chapter 14, Part 10



**COMPLIANCE SUPPLEMENT FOR AUDITS OF LOCAL  
GOVERNMENT ENTITIES**

**TAX INCREMENT FINANCING (TIF)**

REVISION JANUARY 2022

REF: CO18

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## **TYPES OF NEW TIF DISTRICTS ALLOWED**

- (1) Municipalities: Urban Renewal – MCA 7-15-4201 et seq.
- (2) Municipalities, Counties, and Consolidated Governments: Targeted Economic Development District (TEDD) – MCA 7-15-4277 et seq.

TIF districts initiated prior to July 1, 2013, that may continue in existence:

- (1) Industrial Districts
- (2) Technology Districts
- (3) Aerospace Transportation and Technology Districts

## **LEGISLATIVE PURPOSE OF TAX INCREMENT FINANCING (TIF)— TARGETED ECONOMIC DEVELOPMENT DISTRICT**

The legislature finds and declares that:

- (1) infrastructure-deficient areas exist in the local governments of the state and constitute a serious impediment to the development of infrastructure-intensive, value-adding economic development in Montana;
- (2) local governments lack sufficient capital to rectify the infrastructure shortage in infrastructure-deficient areas, thus impeding their ability to achieve economic growth through the development of value-adding industries;
- (3) the creation of infrastructure in support of value-adding economic development is a matter of state policy and state concern because the state and its local governments will continue to suffer economic dislocation due to the lack of value-adding industries; and
- (4) the state's tax increment financing laws should be used to encourage the creation of areas in which needed infrastructure for value-adding industries could be developed.

MCA 7-15-4278

## **AUTHORIZATION FOR TAX INCREMENT FINANCING**

- (1) An urban renewal plan as defined in 7-15-4206 or a targeted economic development district comprehensive development plan created as provided in 7-15-4279 may contain a provision or be amended to contain a tax increment provision as provided in 7-15-4282 through 7-15-4294. Effective October 1, 2021: The local governing body shall approve the adoption of a tax increment provision included in an urban renewal plan. The legislative body of a local government shall approve the adoption of a tax increment provision included in a targeted economic development district comprehensive development plan.
- (2) (a) Before adopting a tax increment financing provision as part of an urban renewal plan or a comprehensive development plan, a municipality shall provide notice to the county and the school district in which the urban renewal district or targeted economic development district is located and provide the county and school district with the opportunity to meet and consult in a public meeting with the opportunity for public

comment regarding the proposed tax increment financing provision and its effect on the county or school district.

(b) Before adopting a tax increment financing provision as part of a comprehensive development plan, a county shall provide notice to the school district in which the targeted economic development district is located and provide the school district with the opportunity to meet and consult in a public meeting with the opportunity for public comment regarding the proposed tax increment financing provision and its effect on the school district.

(3) The tax increment financing provision must take into account the effect on the county and school districts that include local government territory.

MCA 7-15-4282

### **REQUIREMENTS TO CREATE A TARGETED ECONOMIC DEVELOPMENT DISTRICT (TEDD)**

(1) A local government may, by ordinance and following a public hearing, authorize the creation of a targeted economic development district in support of value-adding economic development projects. The purpose of the district is the development of infrastructure to encourage the location and retention of value-adding projects in the state.

(2) A targeted economic development district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned Effective May 20, 2021: to permit the supported value-adding economic development uses for which the district is intended or unzoned, provided development of the district is:

(i) for uses by a local government under Title 76, chapter 2, part 2 or 3, in accordance with the area growth policy, as defined in 76-1-103; or

(ii) if a county has not adopted a growth policy, then for uses in accordance with the development pattern and zoning regulations or the development district adopted under Title 76, chapter 2, part 1;

(c) may not comprise any property included within an existing tax increment financing district;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements as stated in the resolution of necessity adopted under 7-15-4280;

(e) must, prior to its creation, have in place a comprehensive development plan adopted by the local governments that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) The local government may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4294 for the targeted economic development district. If the local government uses tax increment financing, the use of and purpose for tax increment financing must be specified in the comprehensive development plan required in subsection (2)(e). The plan must also describe how the expenditure of tax increment will

promote the development of infrastructure to encourage the location and retention of value-adding projects in the targeted economic development district.

- (4) Deleted effective May 20, 2021: For the purposes of 7-15-4277 through 7-15-4280:
- (a) "secondary value-added products or commodities" means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce;
  - (b) "secondary value-adding industry" means a business that produces secondary value-added products or commodities or a business or organization that is engaged in technology-based operations within Montana that, through the employment of knowledge or labor, adds value to a product, process, or export service resulting in the creation of new wealth.

MCA 7-15-4279

## **FILINGS WITH OTHER JURISDICTIONS**

- (1) The clerk of the local government shall provide a certified copy of the ordinance creating each urban renewal plan or targeted economic development district comprehensive development plan and an amendment to either of the plans containing a tax increment provision to the department of revenue.
- (2) A certified copy of each plan, ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies.

MCA 7-15-4284

The department of revenue shall, upon receipt of a qualified tax increment provision and each succeeding year, calculate and report to the local government and to any other affected taxing body in accordance with Title 15, chapter 10, part 2, the base, actual, and incremental taxable values of the property.

MCA 7-15-4285

See also ARM 42.19.1401, .1403, .1404, .1407, & .1412 for Dept. of Revenue rules.

## **ANNUAL REPORTING REQUIREMENT**

The financial report of a local government that has authorized the use of tax increment financing pursuant to 7-15-4282 must include a report of the financial activities related to the tax increment financing provision.

MCA 2-7-503(1)(b)

- (1) An agency authorized to transact business and exercise powers under part 43 and this part shall file with the local governing body, on or before September 30 of each year, a report of its activities for the preceding fiscal year. A copy of the annual report must be made available upon request to the county and school districts that include municipal territory.



(2) The report must include a complete financial statement setting forth its assets, liabilities, income, and operating expenses and the amount of the tax increment as of the end of the fiscal year. The report must describe the expenditures of tax increment in the preceding fiscal year and how the expenditures comply with the approved urban renewal plan or comprehensive development plan for the district.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that the report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

MCA 7-15-4237

## **DETERMINING AND DISBURSING THE TAX INCREMENTS**

(1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or targeted economic development district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) Except as provided in subsection (2)(b) and (3), the tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district, must be paid into a special fund held by the treasurer of the local government and used as provided in 7-15-4282 through 7-15-4294.

Prior to May 20, 2021: (b) The combined mill rates used to calculate the tax increment may not include mill rates for:

- (i) the university system mills levied pursuant to 15-10-109 and 20-25-439; and
- (ii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision.

Effective May 20, 2021: (b) For targeted economic development districts in existence prior to July 1, 2022, and urban renewal areas, the combined mill rates used to calculate the tax increment may not include mill rates for:

- (i) the university system mills levied pursuant to 15-10-109 and 20-25-439; and
- (ii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision.

(c) For targeted economic development districts created after June 30, 2022, the combined mill rates used to calculate the tax increment may not include mill rates for:

- (i) the university system mills levied pursuant to 15-10-109 and 20-25-439;
- (ii) one-half of the elementary, high school, and state equalization mills levied pursuant to 20-9-331, 20-9-333, and 20-9-360;
- (iii) a new mill levy approved by voters as provided in 15-10-425 after the adoption of a tax increment provision; and
- (iv) any portion of an existing mill levy designated by the local government as excluded from the tax increment.

- (5) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law.

MCA 7-15-4286(1), (2), & (5)

### **PROVISION TO RELEASE A PORTION OF THE TIF**

- (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the local government may provide that a portion of the tax increment from the incremental taxable value be released from segregation by an adjustment of the base taxable value, provided that:
- (a) all principal and interest then due on bonds for which the tax increment has been pledged have been fully paid; and
  - (b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.
- (2) The adjusted base value determined under subsection (1) must be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.
- (3) Thereafter, the adjusted base value is used in determining the mill rates of affected taxing bodies unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body shall reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds.

MCA 7-15-4287

### **ALLOWABLE COSTS**

The tax increments may be used by the local government to pay the following costs of or incurred in connection with an urban renewal area or targeted economic development district as identified in the urban renewal plan or targeted economic development district comprehensive development plan:

- (1) land acquisition;
- (2) demolition and removal of structures;
- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of public improvements or infrastructure, Deleted effective May 20, 2021: including streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
- (5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
- (6) acquisition of infrastructure-deficient areas or portions of areas;

- (7) administrative costs associated with the management of the urban renewal area or targeted economic development district;
- (8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the local government itself at its fair value;
- (9) the compilation and analysis of pertinent information required to adequately determine the needs of the urban renewal area or targeted economic development district;
- (10) the connection of the urban renewal area or targeted economic development district to existing infrastructure outside the area or district;
- (11) the provision of direct assistance to secondary value-adding industries to assist in meeting their infrastructure and land needs within the area or district; and
- (12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

MCA 7-15-4288

### **TERMINATION OF A TIF**

- (1) The tax increment provision contained in an urban renewal plan or a targeted economic development district comprehensive development plan terminates upon the later of:
  - (a) the 15th year following its adoption; or
  - (b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds. Effective May 20, 2021: For targeted economic development districts created after June 30, 2022, the combined term of the original bonds or any refunding bonds may not extend the life of the tax increment provision longer than the 30th year following the original adoption of the tax increment provision.
- (2) (a) Except as provided in subsection (2)(b), any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the area or district.
  - (b) Upon termination of the tax increment provision, a local government may retain and use in accordance with the provisions of the urban renewal plan:
    - (i) funds remaining in the special fund or a reserve fund related to a binding loan commitment, construction contract, or development agreement for an approved urban renewal project or targeted economic development district project that a local government entered into before the termination of a tax increment provision;
    - (ii) loan repayments received after the date of termination of the tax increment provision from loans made pursuant to a binding loan commitment; or
    - (iii) funds from loans previously made pursuant to a loan program established under an urban renewal plan or targeted economic development district comprehensive development plan.
- (3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area or targeted economic development district and must be paid to each of the taxing bodies as provided by law.

- (4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions. However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision.

MCA 7-15-4292

### **AGREEMENTS TO REMIT UNUSED INCREMENTS**

- (1) Subject to subsections (2) through (5), a local government with an urban renewal district containing a tax increment provision may enter into an agreement to remit any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289. The remittance agreement must:
- (a) provide for remittance to each taxing jurisdiction for which the mill rates are included in the calculation of the tax increment as provided in 7-15-4286 (1) and (2); and
  - (b) require that the remittance be proportional to the taxing jurisdiction's share of the total mills levied.
- (2) Any portion of the increment remitted to a school district pursuant to 7-15-4286(3) or this section:
- (a) must be used to reduce property taxes or designated as operating reserve pursuant to 20-9-104 for the fiscal year following the fiscal year in which the remittance was received;
  - (b) must be deposited in one or more of the following funds that has a mill levy for the current school year, subject to the provisions of Title 20 and this section:
    - (i) general fund;
    - (ii) bus depreciation reserve fund;
    - (iii) debt service fund;
    - (iv) building reserve fund;
    - (v) technology acquisition and depreciation fund; and
  - (c) may not be transferred to any fund.
- (3) The remittance will not reduce the levy authority of the school district receiving the remittance in years subsequent to the time period established by subsection (2)(a).
- (4) Any portion of the increment remitted to a school district and deposited into the general fund must be designated as operating reserve pursuant to 20-9-104 or used to reduce the BASE budget levy or the over-BASE budget levy in the following fiscal year.
- (5) If a school district does not utilize the remitted portion to reduce property taxes or designate the remittance as operating reserve within the time period established by subsection (2)(a), the unused portion must be remitted as follows:
- (a) if the area or district is in existence at the time of the remittance, the portion is distributed to the special fund in 7-15-4286(2)(a) and used as provided in 7-15-4282 through 7-15-4294; or
  - (b) if the area or district is not in existence at the time of the remittance, the portion is distributed pursuant to 7-15-4292(2)(a).

MCA 7-15-4291

### **INCREMENT SECURED TO DEBT**

- (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through 7-15-4294 must be designed to mature not later than 25 years from their date of issue and must mature in years and amounts so that the principal and interest due on the bonds in each year may not exceed the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district, and other estimated revenue, including proceeds of the bonds available for payment of interest on the bonds, pledged to their payment to be received in that year.
- (2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in an area or district, and other revenue, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the local government or municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment of the bonds and to fund any reserve fund in respect of the bonds.

MCA 7-15-4324

### **AUTHORIZATION TO ISSUE URBAN RENEWAL BONDS, TARGETED ECONOMIC DEVELOPMENT BONDS, AND REFUNDING BONDS.**

- (1) A local government or municipality may:
  - (a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project or targeted economic development district project under Title 7, chapter 15, part 42, and this part, including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for the projects; and
  - (b) issue refunding bonds for the payment or retirement of bonds previously issued by it.
- (2) Except as provided in 7-15-4302, bonds may not pledge the general credit of the local government or municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, revenue, and funds of the local government or municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects or targeted economic development district projects under Title 7, chapter 15, part 42, and this part, including the tax increment received and pledged by the local government or municipality pursuant to 7-15-4282 through 7-15-4294, and, if the income, proceeds, revenue, and funds of the local government or municipality are insufficient for the payment, from other revenue of the local government or municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects or targeted economic development district projects of the local government or municipality under Title 7, chapter 15, part 42, and this part or by a mortgage on all or part of any projects.

- (3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body.
- (4) If applicable, the governing body of the local government or municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

MCA 7-15-4301

### **AUTHORIZATION TO ISSUE GENERAL OBLIGATION BONDS.**

- (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project or targeted economic development district project, the local government or municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.
- (2) Any bonds issued pursuant to this section must be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by the local government or municipality for public purposes generally.
- (3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project or targeted economic development district project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for a project may be used to finance the exercise of the powers conferred upon the local government or municipality by Title 7, chapter 15, part 42, and this part that are necessary or proper to complete the project in accordance with the approved plan or ordinance and any modification to the ordinance that is duly adopted by the local governing body.
- (4) If applicable, the local government or municipality shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

MCA 7-15-4302

### **AUTHORIZATION TO USE TAX INCREMENTS FOR BOND PAYMENTS**

The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds that the local government may issue for the purpose of providing funds to pay those costs.

MCA 7-15-4289

### **USE OF PROPERTY TAXES AND OTHER REVENUE FOR PAYMENT OF BONDS.**

- (1) (a) The tax increment derived from an urban renewal area may be pledged for the

- payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.
- (b) The tax increment derived from a targeted economic development district may be pledged for the payment of revenue bonds issued for targeted economic development district projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay targeted economic development district costs described in 7-15-4288 and 7-15-4289.
- (2) A local government issuing bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenue of the local government, except property taxes prohibited by subsection (3), to the payment of the bonds if collections of the tax increment are insufficient.
- (3) Property taxes, except the tax increment derived from property within the area or district and tax collections used to pay for services provided to the local government by a project, may not be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.
- (4) If applicable, the local government shall specify whether the bonds are tax credit bonds as provided in 17-5-117, recovery zone economic development bonds or recovery zone facility bonds as provided in 7-7-140, or qualified energy conservation bonds as provided in 7-7-141.

MCA 7-15-4290

### **BONDS NOT SUBJECT TO DEBT LIMITATIONS.**

Bonds issued under 7-15-4301 shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall be subject only to the provisions of the Uniform Commercial Code and the limitations of this part and part 42.

MCA 7-15-4321