



**MONTANA
DEPARTMENT OF
ADMINISTRATION**

State Financial Services Division
Greg Gianforte, Governor
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2021

COMPLIANCE SUPPLEMENT

FOR

STATE AGENCIES –

INDIVIDUAL PROGRAMS

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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/.

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

CURRENT REVISION	DESCRIPTION OF CHANGES
STATE AGENCIES – INDIVIDUAL PROGRAMS	
ADM1 – Forest Reserve	No Changes
AUD1 – Insurance Premium Tax Apportionment	No Changes
COM3 – Hard Rock Mining Impact Trust	No Changes
L&I1 – Building Code Enforcement Program	No Changes
REV1 – Oil & Gas Production Tax	Legislative Change – pg. 3
REV7 – Metalliferous Mines License Tax Allocation	No Changes
TRA1 – Gasoline Tax Apportionment	No Changes



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

**FOREST RESERVE
Schools and Roads-Grants to States
CFDA 10.665**

REVISION JANUARY 2022

REF: ADM1

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PROGRAM OBJECTIVES

The objective is to share receipts from fees collected for timber harvesting, minerals, and land use from national forests with the states in which the national forests are situated. The funds are to be used for the benefit of public schools and public roads.

Congress passed P.L. 116-94 on December 20, 2019, which reauthorized SRS payments for FY19 (payment year FY20) and for FY20 (payment year FY21).

Program information may be found at <https://www.fs.usda.gov/pts/>.

PROGRAM PROCEDURES

Since the early 1900s, the Congress has enacted laws directing that a state or county be compensated for Federal lands in the State. The compensation may be based on Federal acreage or a county's population, but in most instances, the payments relate to a percentage of the receipts generated on Federal land. Federal laws requiring payments to states, based on national forest receipts, provide the basis and methodology of the compensation payments to the states but allow states to prescribe how the funds are spent for schools and roads in the county or counties in which the national forest is situated. All disbursements are processed through the U.S. Treasury.

State Payment (Secure Rural Schools and Community Self-Determination Act payment)

Each eligible county elects to receive either its share of the 25-Percent Payment, as described below, or its share of the State payment. A discussion of the state payment calculation is found at <https://www.fs.usda.gov/working-with-us/secure-rural-schools/payments>.

25-Percent Payment

An amount equal to the annual average of 25 percent of all amounts received for the applicable Federal fiscal year and each of the preceding 6 fiscal years from each national forest is paid to the States. The Forest Service calculates the payments and sends letters to the States advising them of the amount and of each county's historic percentage of the payment based on the county's acreage in the national forest. The Forest Service notifies the U.S. Treasury of the amounts to be paid, and the funds are electronically transmitted to the States. Payments are usually made January following the close of the fiscal year for which receipts were received. Payments are always made the year after the receipt year, which is used to calculate those payments made in the following payment year. The States verify the amount of each deposit with information received from the Forest Service, and then distribute the funds to the counties in which the national forests are situated.

COUNTY ELECTIONS

Each county must communicate its election to the Governor's Office of Budget and Program Planning.

Carbon County and Lake County have tended to elect the 25-percent payment, while all other counties have tended to elect the state payment.

If counties fail to make their election by the specified date, the county shall be considered to have elected to receive a share of the state payment.

If the county elects the state payment, it must also elect an allocation of Title I, Title II, and Title III funding (See “Allocation Guidelines” below). The Governor’s Office then transmits the elections to the U.S. Forest Service (acting on behalf of the Secretary of Agriculture).

For the payments for FY19 and FY20, there is no opportunity for a county to change its allocation election. County elections are locked-in under this reauthorization in the same way they were locked-in under the previous authorization.

For the payments for FY19 and FY20, the county’s elected payment (the election to receive a share of the state’s 25-percent payment or a share of the State (formula) payment), and the county election to allocate its share of the State payment for Titles II and III, will be the same elections made by the county for the payment for FY 2013.

COUNTIES ELECTING TO RECEIVE THE 25% PAYMENT (Title I – Public Roads and Schools)

If a county elects to receive the 25% payment, all Forest Reserve funds received must be distributed as follows:

- a. Sixty-six and two thirds percent (66 2/3%) to county road fund (**BARS Fund #2110**) (But see below for counties with special road districts)
- b. Thirty-three and one third percent (33 1/3%) to the following countywide school levies, based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds:
 - a. 33 Mills county equalization for elementary schools provided for in 20-9-331 (BARS Fund #7542)
 - b. 22 Mills county equalization for high schools provided for in 20-9-333 (BARS Fund #7541)
 - c. county transportation fund provided for in 20-10-146 (BARS Fund #7820)
 - d. elementary and high school retirement funds provided for in 20-9-501 (BARS Funds #7840 & #7830, respectively)

MCA 17-3-213(2), (5), & (6)

NOTE: The information on MACO’s website, <https://www.mtcounties.org/resources-data/>, also includes a worksheet that may be used to calculate the correct fund distribution.

Use of Road Fund Moneys: The portion of the Forest Reserve moneys retained by the county government itself is required to be deposited to the county road fund. The county road fund shall only be used for the construction, repair, and maintenance of all public highways within the

boundaries of the county that are outside the corporate limits of any city or town and that are not either state or federal highways.

MCA 7-14-2513

Special Road Districts: In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 2/3% distributed under subsection (5)(a) for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.

MCA 17-3-213(7)

COUNTIES ELECTING TO RECEIVE A SHARE OF THE STATE PAYMENT – REQUIRED ALLOCATIONS

The payment should be allocated as follows, based on the amount of the State Payment that the county receives:

The county share of the State payment may vary depending on updates to acreage of national forest in the county, per capita personal income and the number of counties that elect to receive the State payment.

The following is a summary of the allocations guidelines for counties electing to receive a share of the Secure Rural Schools Act State payment.

- Less than \$100,000. An eligible county that elects to receive a share of the State payment that is \$100,000 or less (a minor distribution) may elect to use 100-percent of its share for public roads and schools under title I. In the alternative, the county may opt to allocate 15-percent to 20-percent of its share to title II, title III, or a combination of both. The total percentage allocated to title II and title III combined must be no less than 15-percent and no greater than 20-percent. The county also may opt to return its allocation, in whole or part, to the Federal Government.
- \$100,000 to \$349,999. If the county share of the State payment is more than \$100,000 but less than \$350,000 (a modest distribution), the county must allocate 15-percent to 20-percent of its share to title II, title III, or a combination of both. The total percentage allocated to title II and title III must be no less than 15-percent and no greater than 20-percent. The county also may opt to return its allocation, in whole or part, to the Federal Government.
- \$350,000 or greater. If the county share of the State payment is \$350,000 or greater (a major distribution), the county must allocate 15-percent to 20-percent of its share to title II, title III, or a combination of both, except that the allocation for title III projects may not exceed 7-percent. The total percentage allocated to title II and title III combined must be no less than 15-percent and no greater than 20-percent. The county also may opt to return its allocation, in whole or part, to the Federal Government.

TITLE I, TITLE II, and TITLE III PAYMENTS

For a listing of Title I, Title II, and Title III payments by county go to <https://www.mtcounties.org/resources-data/> for MACO's worksheet – select Federal Payments & Resources for Counties, then Federal Forest Payments & History.

See also <http://www.fs.fed.us/srs/> and select the “Annual Payment Information” link from the right-hand sidebar.

For a discussion of the relationship between PILT funding and this funding, go to <https://www.doi.gov/pilt/>

TITLE I Secure Payments for States and Counties Containing Federal Land

Title I funds must be used for public schools and roads in accordance with 16 U.S.C. 500. Under 16 U.S.C. 500, States have broad discretion as to how to allocate the payment for public schools and roads, including authorizing the county to make the allocation. Montana allocates per MCA 17-3-213.

TITLE II (“SPECIAL PROJECTS” ON FEDERAL LANDS)

Special projects on Federal land where projects would benefit the resources on Federal land. This portion of the State payment allocated to Title II is not paid to States or counties. It is reserved for special projects recommended by a Secure Rural Schools Act resource advisory committee and approved for the Secretary of Agriculture or authorized designee. In the case of Title II projects that are to be completed in a single year, the total project amount is transferred. In the case of a multi-year Title II project, only the amount to be used in one fiscal year will be transferred.

Resource Advisory Committees (RACs): A Secure Rural Schools Resource Act Advisory Committee (RAC) provides recommendations to the Forest Service on the development and implementation of special projects on federal lands.

A county must submit its Title II project proposals to a resource advisory committee (RAC). Each RAC consists of 15 people representing varied interests and areas of expertise who work collaboratively with among community members and national forest personnel. More information on RACs can be found at <https://www.fs.usda.gov/working-with-us/secure-rural-schools/title-2>. The RAC reviews the projects proposed by counties, and submits the proposed projects to the Secretary of Agriculture who, in turn, approves or rejects projects. The RAC provides frequent opportunities for citizens, organizations, tribes, land management agencies, and other interested parties to participate in Title II project development. The RAC also monitors implementation of the approved projects and makes recommendations for appropriate changes. All meetings of the RAC must be announced at least one week in advance in a local newspaper of record and must be open to the public. Records of the RAC meetings must be made available for public inspection.

A project is considered to be initiated when a RAC recommends the project to the Forest Service. The recommendation is documented in the committee's meeting minutes.

Allowable Uses: Title II funds may be used for the for protection, restoration, and enhancement of fish and wildlife habitat, and other resource objectives consistent with the Act on Federal land and on non-Federal land where projects would benefit the resources on Federal land.

Objectives may include:

- a. Road, trail and infrastructure maintenance or obliteration;
- b. Soil productivity improvement;
- c. Improvements in forest ecosystem health;
- d. Watershed restoration and maintenance;
- e. Restoration, maintenance and improvement of wildlife and fish habitat;
- f. Control of noxious or exotic weeds; and
- g. Reestablishment of native species.

Title II project funds may also be used to pay for an environmental review, consultation, or compliance with applicable environmental laws required in connection with the project. PL 110-343, Section 204(b)

Termination:

Counties now have the authority to initiate Title II or Title III projects through September 30, 2022, using any Title II or Title III funds that were received under previous authorizations, or that will be received under this reauthorization. Title III funds must be obligated by September 30, 2023.

TITLE III ("COUNTY" FUNDS)

Use BARS Fund #2902

Allowable Uses of Title III funds:

Title III authorized uses remain unchanged under P.L. 116-94. Title III uses are as follows:

- a. to carry out activities under the Firewise Communities program;
- b. to reimburse the participating county for search and rescue and other emergency services, including firefighting and law enforcement patrols;
- c. to cover training costs and equipment purchases directly related to the emergency service described in (b); and
- d. to develop and carry out community wildfire protection plans. Previously received Title III funds can be used for any of the above authorized uses.

Questions and answers pertaining to use of Title III funds can be found at:

<https://www.fs.usda.gov/working-with-us/secure-rural-schools/title-3-faqs>

Documentation of Initiation: A county's initiation of a Title III project must be documented. A project may be considered to be initiated at a point in time before the county publishes its

intention to use Title III funds for an authorized project in a publication of local record (see Public Comment Period, below). The Forest Service recommends that the county document this initiation in the meeting minutes of the board of county commissioners.

Documentation of Obligation: The Forest Service recommends that a county's procedure for and documentation of its obligation of Title III funds be consistent with its procedures to obligate funds from other Federal sources.

Public Comment Period: County funds can be used for the allowable Title III purposes (above) only after a 45-day public comment period, at the beginning of which the county shall publish the proposed use of the county funds and submit the proposal to any RAC established for the county.

Certification: By February 1, the county shall submit to the Secretary of Agriculture a certification that the county funds (Title III) expended in the previous year have been used for the uses authorized under the Act, including a description of the amounts expended and the uses for which the amounts were expended. The forest Service will update the certification procedures to collect information about obligation of title III funds as well as expenditures.

Questions and answers pertaining to use of certification of Title III funds can be found at: <https://www.fs.usda.gov/detailfull/pts/countyfunds/?cid=stelprdb5103015&width=full>

Certification Form: The certification form (Form OMB 596-0220) can be found at the US Forest Service website (see above).

SUGGESTED AUDIT PROCEDURES

- Determine what allocation the county has selected for its share of the State Payment or 25% payment. Verify that the county's treatment of the various allocations is in compliance with Title II and Title III. Refer to the information on MACO's website: <https://www.mtcounties.org/resources-data/>.
- Test the county's distribution of each annual payment to verify that the money was allocated 66 2/3% to the county road fund and 33 1/3% to the countywide school levied funds listed above.
- Test the distribution to the countywide school levied funds noted above to verify that the 33 1/3% was allocated based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds.
- As part of the testing of road fund expenditures, determine that road fund expenditures are made for only those purposes allowed by State law.
MCA 7-14-2513

- If the county has special road districts, determine the total area of the entire county and the area of each special road district. Test to verify that the 66 2/3% portion of the annual payment was distributed to the special road districts within the county and the county road fund based on the percentage that the total area of the road district bears to the total area of the entire county.
MCA 17-3-213
- Determine if Title III county funds were used for allowable activities.
- Verify that the county provided public notice 45 days prior to using Title III funds.
- If the county has special road districts, determine the total area of the entire county and the area of each special road district. Test to verify that the 66 2/3% portion of the annual payment was distributed to the special road districts within the county and the county road fund based on the percentage that the total area of the road district bears to the total area of the entire county.



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

**INSURANCE PREMIUM TAX
APPORTIONMENT**

REVISION JANUARY 2022

REF: AUD1

INFORMATION CONTACT:

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PROGRAM OBJECTIVES

To provide funds for the benefit of city/town fire department relief associations (fire department pension funds) and police pension funds. For those cities and towns that do not have a police pension fund, the State Auditor's Office provides funds for police department employee training, equipment and personnel expenses relating to substance abuse enforcement, or other pension contributions.

PROGRAM PROCEDURES

The State Auditor's Office issues a warrant to the treasurer of every third-class city or town that has a fire department relief association that is entitled by law to receive payments. The payment is in an amount equal to 1 ½ mills of the total taxable value of the city or town. The minimum payment is \$100.

The State Auditor's Office also issues a warrant to each city and town that has a police department and is not a participant in the municipal police officers' retirement system (MPORS). This payment is in the same amount as the above payment for the fire department relief association. Both payments are paid out of the premium taxes on insurance risks specified in MCA 19-18-512 that are collected by the State Auditor.

PAYMENTS TO FIRE DEPARTMENT RELIEF ASSOCIATIONS (FDRAS)

After the end of each fiscal year, the State Auditor shall issue and deliver a warrant to the treasurer of each city or town that has a fire department relief association (FDRA) entitled by law to receive payments. The warrant must be for the use and benefit of the association.
MCA 19-18-501 & 512

The warrant must be for an amount equal to 1 1/2 mills of the total taxable value of the city or town, with a minimum payment of \$100.
MCA 19-18-512

The warrant must be deposited in the FDRA fund BARS Agency/Custodial Fund #7120. If the FDRA maintains its own accounts separately from the city/town treasury, the city/town should subsequently remit the full amount to the FDRA.
MCA 19-18-105 & 106, MCA 19-18-202

The FDRA fund may not be used for any purpose other than investment and the payment of the following:

- (1) a service pension to a member who, by reason of service, has become entitled to a service pension;
- (2) a pension to a member who has become permanently maimed or disabled;
- (3) a benefit or allowance to a member who has suffered a permanent disabling injury;
- (4) a benefit or allowance to a member who has contracted a permanent disabling sickness;
- (5) a benefit, not exceeding \$750, to defray the funeral expenses of a member;

- (6) benefits to the surviving spouse, child, or children of a deceased member;
- (7) premiums on a blanket policy of insurance covering the members of the fire department and providing for payment of compensation in case of the death of or injury to any such member;
- (8) the return of employee contributions.

MCA 19-18-203

The secretary and treasurer of the FDRA shall annually, within 6 months after the close of the fiscal year, prepare an annual financial report for the preceding fiscal year and file report copies with the association, the State Auditor, and the Department of Administration (Local Government Services). The State Auditor may not make the insurance premium tax apportionment payment to the city or town until the report is filed.

MCA 19-18-205, MCA 2-7-503

Note: If the city or town does not have an active FDRA (i.e., no longer maintains a fire department and has no eligible retirees), it may not receive a payment from the State Auditor.

Suggested Audit Procedures

Verify that an insurance premium tax payment was deposited to the city or town FDRA fund and remitted to the association if the association maintains its funds separately from the city or town treasury. If no payment is recorded, determine whether an annual financial report was filed with the State Auditor.

Determine the taxable value of the city or town and determine the value of 1 ½ mills. Verify that the amount recorded in the FDRA fund reasonably agrees to this calculation. If the calculation results in an amount less than \$100, verify that \$100 was received and recorded in the fund.

If the city or town treasurer acts as the ex officio treasurer of the association, review disbursements from the FDRA fund to verify that all were for allowable purposes as set forth in MCA 19-18-203, above.

If the city or town treasurer acts as ex officio treasurer of the association, review the annual financial report remitted to the State Auditor. Verify that the balances and activities reported agree to records of the city or town.

PAYMENTS TO POLICE DEPARTMENTS

If a third-class city or town has a police department and does NOT participate in the State Municipal Police Officers' Retirement System (MPORS), it is entitled to receive an annual insurance premium tax payment in the same amount as the payment received for its fire department relief association.

MCA 19-19-305

To determine whether the city or town is a member of the municipal police officers' retirement system (MPORS), go to <https://mpera.mt.gov/about/annualreports1/annualreports>. Select the

annual comprehensive financial report for the applicable fiscal year. The final pages of the Statistical Section contain a listing of the employer members of the various retirement systems. Those local governments that do not participate in MPORS should receive this insurance premium tax apportionment.

The warrant must be for an amount equal to 1 1/2 mills of the total taxable value of the city or town, with a minimum payment of \$100.

MCA 19-18-512

Suggested Audit Procedure

Determine the taxable value of the city or town and calculate the value of 1 ½ mills. Verify that the amount recorded in either the police pension or police reserve training fund** reasonably agrees to this calculation. If the calculation results in an amount less than \$100, verify that \$100 was received and recorded in the fund.

**See below for discussions of using this payment for police pension or police training purposes.

PAYMENTS TO CITIES/TOWNS WITH A POLICE PENSION FUND

The insurance premium tax apportionment moneys received for police retirement must be deposited in the city or town police pension fund.

MCA 19-19-305

A police pension fund may not be used for any purpose other than to make payments to members of the police department on the retired list and to make authorized investments.

MCA 19-19-202

On or before April 1 of each year, the board of trustees of the local police pension fund shall report certain information to the State Auditor. If the information indicates the need for a supplement to certain pensions, the State Auditor will calculate and pay the supplemental amount, at the same time as and in addition to the payment to be made by the state auditor under 19-19-305.

MCA 19-19-506

When a city or town no longer employs a police officer eligible to receive benefits paid from the police pension fund and when there are no retired police officers or beneficiaries eligible to receive benefits from the fund, the city or town shall dissolve the fund and pay to the state auditor an amount proportional to the prior contributions made by the State Auditor under 19-19-305. Any remaining money in the fund must be transferred to the city or town general fund to be used for any authorized city or town purpose.

MCA 19-19-202

Suggested Audit Procedures

Verify that an insurance premium tax payment was deposited to the police pension fund, in the proper amount.

Determine whether there are police officers or retired officers or beneficiaries eligible to receive benefits from the fund. If there are not, an audit recommendation should be made to close the fund as required by State law.

Review disbursements from the police pension fund to verify that all were for allowable purposes as set forth in MCA 19-19-202, above.

Review the annual financial report remitted to the State Auditor. Verify that the balances and activities reported agree to records of the city or town. If the report indicates that the State Auditor made a supplemental pension payment per MCA 19-19-506, verify that this supplemental payment was deposited to the police pension fund.

PAYMENTS TO CITIES/TOWNS WITHOUT A POLICE PENSION FUND

The insurance premium tax apportionment moneys received for police retirement must be spent for

1. police department employee training,
2. for equipment and personnel relating to substance abuse enforcement, or
3. to purchase pensions for employees of its police department.

MCA 7-32-4120

The city or town should deposit the premium tax apportionment moneys to the Police Reserve Training Fund, BARS Fund #2810.

Note: It may also deposit these moneys to another fund, such as the general fund, although separate accountability should be maintained in some form.

On or before April 1 of each year, the city or town shall report to the State Auditor as to the expenditures of all funds received pursuant to 19-19-305.

MCA 7-32-4120(3)

Consolidated City/County Law Enforcement: Cities or towns that have consolidated their police departments with county law enforcement offices may not use these funds to pay the county for their share of the consolidated law enforcement expense unless those funds are used exclusively for pensions and/or training.

AGO #117, Vol. 37 (1978) (MCA 7-32-101)

Payments from the State Auditor may not be used for a pension trust plan for police officers who are also members of the Public Employees' Retirement System.

AGO #92, Vol. 42 (1988) (MCA 19-19-305)

Suggested Audit Procedures

Verify that an insurance premium tax payment was deposited to the police reserve training fund or other fund, in the proper amount.

Review disbursements from the police reserve training fund to verify that all were for allowable purposes as set forth in MCA 7-32-4120 or as discussed in the AGOs above.

If insurance premium tax apportionment funds received for police training purposes are not specifically identified (i.e., deposited to general fund), determine that total expenditures from that fund for police department employee training, for equipment and personnel relating to substance abuse enforcement, or for the purchase of pensions for employees of its police department are at least equal to the amount received that year from insurance premium tax apportionment funds. If not, determine that the city or town has identified or earmarked any remaining balance for those allowable purposes and has a system to ensure that the funds will be used for allowable purposes in future years.

Review the annual financial report remitted to the State Auditor. Verify that the balances and activities reported agree to records of the city or town.



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

**HARD ROCK MINING IMPACT TRUST
Funds Transferred to Counties**

REVISION JANUARY 2022

REF: COM3

INFORMATION CONTACT:

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Hard-Rock Mining Impact Board

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PROGRAM OBJECTIVES

The Hard Rock Mining Impact Trust Account funds are to be used by the counties when a mine closes or when there is a reduction in the full-time employees employed by the mine.

PROGRAM PROCEDURES

The Hard-Rock Mining Impact Board, which is allocated to the Department of Commerce for administrative purposes, receives 2.5% of the metalliferous mines license tax as provided by MCA 15-37-117(1)(b). This money is deposited to the State Hard-Rock Mining Impact Trust Account. Out of this account, the Board must pay administrative and operating expenses of the Board. In addition, a reserve amount of not to exceed \$100,000 is to be maintained. The remaining money must be segregated within the account by county of origin, as provided by 90-6-304(3). Prior to October 1 of each year, all money segregated by county in the State Hard-Rock Mining Impact Trust Account as of September 1 must be transferred to the county for which the funds have been held in deposit. Counties receiving these funds must deposit them in the county hard-rock mine trust account.

(4) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

- (a) file a financial report required by 15-1-504;
- (b) remit any amounts collected on behalf of the state as required by 15-1-504; or
- (c) remit any other amounts owed to the state or another taxing jurisdiction.

MCA 15-37-117

HARD ROCK MINE TRUST ACCOUNT

The State Hard-Rock Mining Impact Trust Account money that is distributed to counties is to be deposited in a separate county hard-rock mine trust account (BARS Fund No. 2895).

MCA 90-6-331, MCA 7-6-2225

Money deposited in the account must be invested and the interest and income from the investments are to be credited to the account.

MCA 7-6-2225(5)

CONDITIONS FOR WHICH COUNTY MAY USE MONIES IN HARD ROCK MINE TRUST ACCOUNT

The money received by a county from the State Hard-Rock Mining Impact Trust Account may not be appropriated by the governing body until:

- a. a mining operation has permanently ceased all mining related activity; or
- b. the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

MCA 7-6-2225(2)

Allocation to School Districts: If there is a mine closure or a reduction in the mining work force which meets the above conditions, the governing body of the county must allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county.

MCA 7-6-2225(3)

Use of Balance by County: The remaining money in the county hard-rock mine trust account, after the allocation to the schools, is to be used for the following purposes:

- a. to pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining workforce;
- b. decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;
- c. promote diversification and development of the economic base within the jurisdiction of a local government unit through assistance to existing business for retention and expansion, or to assist new business;
- d. attract new industry to the impact area;
- e. provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity; or
- f. provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity.

MCA 7-6-2225(3)

Except as provided in subsection (b), above, money held in the hard-rock mine trust account may not be considered as cash balance for the purpose of reducing mill levies.

Suggested Audit Procedures:

Review county treasurer receipts to determine if the county received funds from the State Hard-Rock Mining Impact Trust Account. **Note:** The payment often will be received between September 1 and October 15. If so, verify that these moneys were deposited to the county hard-rock mine trust account (BARS Fund No. 2895). The county may also receive metalliferous mines license tax apportionments directly from the Department of Revenue, which are deposited to this same fund. - See REV7

Verify that money deposited in the account was invested as provided by law and that the interest earned was credited to the account.

If money has been appropriated or expended from the county hard-rock mine trust account, determine that the required mine closure or reduction in the mining workforce occurred. If money was expended from the account, determine that the county distributed at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county. If money was expended from the account, test expenditures from the hard-rock mine trust account to determine that expenditures other than the required distributions to the school districts were for the allowable purposes described above.



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

**BUILDING CODE ENFORCEMENT
PROGRAM**

REVISION JANUARY 2022

REF: L&I1

INFORMATION CONTACT:

Montana Department of Labor and Industry
Business Standards Division
Building and Commercial Measurements Bureau
Eric Copeland (406) 841-2053

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BUILDING CODE ENFORCEMENT PROGRAM OBJECTIVES

The Building Codes Bureau (referenced throughout as “the Bureau”) within the Department of Labor and Industry may certify a city, county, or town to enforce certain building, mechanical, electrical and/or plumbing codes within the respective local government jurisdictions. Codes adopted and enforced by the local governments must be the same as those adopted (and as modified) by the Bureau. The establishment of permit fees shall be left to the local governments, but a list of current permit fees must be submitted to the Bureau when the fees are first established or subsequently amended.

BUILDING CODE ENFORCEMENT PROGRAM PROCEDURES

Counties, cities, and towns wishing to adopt and enforce building codes within their jurisdictional areas must apply for and receive the approval of the Bureau. A county, city or town may not enforce a building code unless:

- (a) the code enforcement program has been certified by the Bureau as in compliance with applicable statutes and department certification rules;
- (b) the current adopted code (adopted by ordinance or administrative action), a current list of fees to be imposed, and a current plan for code enforcement, and staff qualifications have been filed with and approved by the Bureau; and
- (c) any building code enforcement staff providing inspections, plan review or code interpretations must be licensed or certified.

MCA 50-60-302(1)

Only counties or incorporated cities and towns in Montana have the option of adopting their own code enforcement programs.

- (a) A city or town may enforce its building code only within the incorporated limits of the city or town.
- (b) A county may adopt a building code under this chapter on a countywide basis unless a city or town within the county has adopted a building code. If a city or town within the county has adopted a building code, then the county may not enforce the county building code in that city or town.
- (c) A county, city or town may contract for inspections and/or plan review services but must provide copies of such contracts to the Bureau for approval prior to the contractual services being provided. (NOTE: A county, city, or town may contract for only the ***enforcement*** of its building code; the ***administrative services*** should be maintained by the certified jurisdiction, not a contracted source.).

MCA 50-60-304; ARM 24.301.231

AGREED-UPON PROCEDURES ENGAGEMENT

A city, county, or town with a certified building code enforcement program that had a building code program reserve fund balance in the preceding fiscal year in excess of \$10,000 and had building permit revenues in the previous fiscal year of more than \$10,000 shall require its independent auditor, in conjunction with the audit required by MCA 2-7-503, to perform agreed-

upon procedures to determine whether the city, county or town has complied with the financial related statutes and administrative rules relating to city, county or town building code enforcement programs. The Bureau may require cities, counties, and towns with certified building code enforcement programs which do not meet the above criteria to provide such an agreed-upon procedures engagement on a case-by-case basis. The agreed-upon procedures engagement must be performed and reported in accordance with standards prescribed by the American Institute of Certified Public Accountants.

ARM 24.301.208(3)

Mandatory Format for Agreed-Upon Procedures Engagement: The agreed-upon procedures engagement must include the procedures necessary to satisfy the reporting format adopted by the Bureau at ARM 24.301.208. Use of this reporting format is mandatory. A copy of the document may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, MT 59620-0517. Copies may also be obtained by facsimile request sent to Certified City Program at (406) 841-2050, by email request sent to bsdcb@mt.gov, or by downloading the document from the Department of Labor and Industry's web site at https://bsd.dli.mt.gov/_docs/building-codes-permits/agreed-pro.pdf.

ARM 24.301.208(3) & (4)

The cost of the agreed-upon procedures engagement shall be paid by the city, county or town, but may be considered a direct cost of the code enforcement program.

ARM 24.301.208(5)

Copies of the report on applying agreed-upon procedures shall be filed with the Building Codes Bureau.

ARM 24.301.208(6)

For purposes of reporting direct charges against a building code enforcement program in an agreed-upon procedures audit, time and motion or cost allocation studies will not be acceptable as a basis to support direct charges.

ARM 24.301.208(2)

The auditor should consider whether any findings resulting from performing the agreed-upon procedures should be included in the audit report of the city, county, or town, as well as in the accountant's report on applying agreed-upon procedures.

CPAs Performing Agreed-Upon Procedures: The following compliance requirements are presented for informational purposes as you perform the Agreed-Upon Procedures engagement discussed above. DO NOT perform the "suggested audit procedures" below. Instead, perform the agreed-upon procedures in the bureau's mandatory format as discussed above.

PERMIT FEES

Each county, city or town certified under Section 50-60-302, MCA, shall, within its jurisdictional area, ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

- a. except as provided in c. below, used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable to the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the building codes enforcement program. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.
 - i. Note: Permit fees are not to be used to support fire departments, planning, zoning, or other activities, except to the extent that employees in those programs provide direct plan review, inspection or other building code enforcement services for the building code enforcement program. (ARM 24.301.203(2))
- b. reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented. (Note: The “reserve account” referenced here represents the ending equity of the fund in which the entity accounts for its building code enforcement program.)
- c. allocated and remitted to the Bureau, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes education program. (See Compliance Requirement No. 2 below)

MCA 50-60-106(2)(g); ARM 24.301.203

The local government must maintain a system and adequate records to:

- a. document that permit fees are used only for those costs related to building code enforcement activities, as defined above;
- b. document the amount by which revenues from permit fees differs from the costs related to building code enforcement activities each year;
- c. document the amount maintained as a reserve and the percentage of the costs of building code enforcement activities that the reserve represents;
- d. document that any reserve is utilized only for the cost of building code enforcement activities’ and
- e. document that permit fees were reduced as required in the event the reserve exceeds the maximum reserve allowed, as discussed above.

ARM 24.301.203(4)

Suggested Audit Procedures – Permit Fees:

Test revenue from permit fees and determine that permit fees charged are in accordance with the permit fee schedule as established by the local government and as filed with and approved by the Bureau.

Review and test the local government's system and records as necessary to ensure that permit fees are only used for building code enforcement, as defined in MCA 50-60-106 and above.

If indirect costs are charged to the building code enforcement program and paid with permit fees:

- a. determine that the indirect costs are charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges;
- b. determine that indirect costs have not been waived for any local government proprietary fund (if so, they must also be waived for the building code enforcement program); and
- c. determine that indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government (2 CFR, Subtitle A, Chapter II, part 225).

Determine that permit fees are reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months.

DISTRIBUTION OF 5% OF PERMIT FEES

Local government programs certified for the enforcement of building codes shall remit to the Building Codes Bureau 0.5% of building fees or charges collected for the building codes education fund.

- a. Local governments with annual revenues from building fees and charges of **\$100,000 or more** shall make the payment in two semi-annual installments, the first half on or before February 1, for revenues collected between the preceding July 1 and December 31, and the second half on or before September 1 for revenues collected between the preceding January 1 and June 30.
- b. Local governments with annual revenues from building fees and charges of **less than \$100,000** may make one annual payment on or before September 1 for revenues collected between the preceding July 1 and June 30.

ARM 24.301.211

Suggested Audit Procedure - Distribution Of 5% Of Permit Fees:

Determine the total amount of annual revenues from building fees and charges. Verify that the payment remitted to the State by the local government was equal to 0.5% of this total revenue amount. Verify also that the local government remitted the payments to the State within the due dates discussed above.

NOTIFICATION

A local government with a certified code enforcement program shall notify the Bureau, within 10 days whenever any of the following events occur:

- a. where a code enforcement program provides any part of its services in accordance with or through contractual arrangements, any material changes in such contracts, including but not limited to breach, reformation, rescission, or modification must be reported;

- b. when building officials or supervisory personnel are no longer employed in those capacities within the certified code enforcement programs; or
- c. when the jurisdictional area changes due to annexation of additional parcels of land. A map showing any changes to the jurisdictional area must be provided to the Bureau within 45 days of any such change.

ARM 24.301.209

Suggested Audit Procedure - Notification:

Through inquiry and review of records, verify that the local government notified the Bureau, if any of the events discussed above occurred during the audit period.

ANNUAL REPORTING

Beginning on September 1, 2004, and continuing thereafter on a three-year rotating basis, counties, cities and towns shall submit annual reports which provide detailed answers to each of the criteria listed below (items a. through k.), even if there has been no change since the previous reporting period, as follows: (ARM 24.301.207(4))

- a. beginning in September 2004, counties, cities, and towns whose names begin with the letters A through H;
- b. beginning in September 2005, counties, cities, and towns whose names begin with the letters I through P; and
- c. beginning in September 2006, counties, cities, and towns whose names begin with the letters Q through Z.

The annual report required to be submitted every three years should contain all the following information:

Note: Each item below should be answered and tabbed separately from all other annual report information.

- a. an official map or certified legal description of the jurisdictional area;
- b. a list of building-related codes being enforced, including edition dates;
- c. copies of ordinances which adopt each building-related code, or each administrative order used to adopt each building-related code if not previously provided in accordance with ARM 24.301.202;
- d. a list of the type of structures subject to and a list of the type of structures exempted from the building related codes;
- e. a schedule of fees charged for permits;
- f. an accounting of the collection and expenditure of fees and charges for the immediately preceding fiscal year;
- g. a copy of the ordinance establishing the appeal procedure or the acknowledgment that the International Building Code appeals procedure will be followed;
- h. a list of members of the appeals board and their qualifications;
- i. the current plan of enforcement:
 - (i) a general description of how permits are applied for and issued;
 - (ii) how plan reviews are conducted;
 - (iii) how and when inspections are made;

- (iv) how final approvals or certificates of occupancy are issued; and
- (v) how factory-built buildings and manufactured homes are permitted and inspected;
- j. a list of employees inspecting, reviewing plans or approving any installation with descriptions of responsibilities and qualification status of each employee as provided in the ARM 24.301.206; and
- k. if any services relating to building code enforcement are provided through contractual arrangements, a current copy of any and all such contracts.

ARM 24.301.207(3)

State law and the Bureau's ARMs state that a local government may submit an annual report at other times other than as required above, and that the Bureau may request a local government with a certified code enforcement program which has not filed an annual report to respond to inquiries regarding its code enforcement program so the Bureau can ensure program functions are being properly performed as required by MCA 50-60-302(2). The Bureau's practice is to always request an annual report, whether the required complete three-year report, or an interim report. Interim reports are required to include the following information:

- a. an official map or certified legal description of the jurisdictional area, if the jurisdictional area has changed during the fiscal year and the changes have not already been reported to the Bureau;
- b. a list of building-related codes being enforced, including edition dates;
- c. if there were any changes in codes or applicable ARMS's being enforced, a complete copy of the adopting ordinance or administrative action;
- d. an accounting of the collection and expenditures of fees and charges for the immediately preceding fiscal year (including supporting documentation of reserve balances);
- e. a list of employees inspecting, reviewing plans, or approving any installation with descriptions of responsibilities and qualification status of each employee (including current copies of certification/licensure documents); and
- f. a copy of any contractual agreement to provide services to the building code enforcement program, if a current one is not already on file.

Annual reports shall be filed with the Bureau on or before September 1 of each year for the immediately preceding fiscal year.

ARM 24.301.207(1) & (2)

Suggested Audit Procedure - Annual Reporting:

Review the entity's annual or interim report submitted to the Bureau and verify that the information provided is supported by documentation maintained by the entity's building code enforcement program.



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

OIL & GAS PRODUCTION TAX

REVISION JANUARY 2022

REF: REV1

INFORMATION CONTACT:

Montana Department of Revenue

Jake Ford (406) 444-0980

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PROGRAM OBJECTIVES

The objective of the Oil and Natural Gas Production Tax Distribution is to allocate a fixed percentage of oil and natural gas production taxes (hereinafter referred to as “O&G taxes”) collected in each county to that county.

PROGRAM PROCEDURES

O&G taxes are paid to the Department of Revenue (DOR) in quarterly installments. The DOR determines the taxes paid on production in each county and school district taxing unit, and remits a specified percentage of those taxes on a quarterly basis to the counties. County treasurers in turn distribute specified percentages to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts. Monies remaining after this distribution are retained by the counties.

For Quarterly O&G Distribution Reports prepared by the DOR, go to <https://mtrevenue.gov/dor-publications/oil-gas-distribution-reports/>.

For each quarter, there is a cover letter and distribution schedule(s). The “COGS Quarterly County Distribution Cover Letter” explains the information reported on the “COGS Quarterly County Distribution” report – which gives the county share, the county-wide school funds’ shares, and the shares for each school district in the county. Further breakdowns are provided in the “School District Fiscal Year Distribution” and the “Levy District Fiscal Year Distribution” reports – both of which are cumulative for the reporting year.

Note: In addition to this Oil and Natural Gas Production Tax Distribution, the DOR also makes distributions from the state oil and gas natural resource distribution account established in 90-6-1001(1) to counties based on county oil and gas production. These are two separate revenue sources/distributions. These distributions are made on the same quarterly payment schedule as the O&G production tax distributions for distribution to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the allocation must be distributed to the cities and towns based on their relative populations.

MCA 15-36-332(7)

QUARTERLY PAYMENT SCHEDULE

Subject to 20-9-310 (see below) and subsection (9) of this section, the DOR shall remit O&G taxes to the treasurer of each eligible county on a quarterly basis, as follows:

1. on or before August 1 of each year the department shall remit O&G tax payments received for the calendar quarter ending March 31 of the current year,
2. on or before November 1 of each year the department shall remit O&G tax payments received for the calendar quarter ending June 30 of the current year,
3. on or before February 1 of each year the department shall remit O&G tax payments received for the calendar quarter ending September 30 of the previous year, and

4. on or before May 1 of each year the department shall remit O&G tax payments received for the calendar quarter ending December 31 of the previous year.

A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

- (a) file a financial report required by 15-1-504;
- (b) remit any amounts collected on behalf of the state as required by 15-1-504; or
- (c) remit any other amounts owed to the state or another taxing jurisdiction.

MCA 15-36-332(6) & (9)

Suggested Audit Procedure:

Verify that the county received, and posted to its accounting records all its quarterly distributions of O&G taxes.

DISTRIBUTIONS TO COUNTY-WIDE SCHOOL LEVIES & SCHOOL DISTRICTS

Each county treasurer shall distribute O&G taxes to the countywide elementary and high school retirement funds, countywide transportation funds, eligible school districts and, countywide community college districts (if applicable**), according to the percentages in MCA 15-36-332(2). The DOR calculates the distribution to each school district for each county based on the criteria in MCA 15-36-332(4), and subject to the provisions of 20-9-310 (as discussed below). The county's total distribution and an itemization for each element of the distribution, in dollar amounts, are provided by the DOR to the county treasurer along with the quarterly remittance.

****Note:** Counties with countywide community college districts are Custer and Dawson.

Oil and Natural Gas Production Tax Limitations: Except as provided in subsection (5), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the district's maximum budget, determined in accordance with 20-9-308.

MCA 20-9-310(1)

The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314. Effective July 1, 2021, and applicable to school fiscal years beginning on or after July 1, 2021: For a district in nonoperating status under 20-9-505, the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget in the district's most recent operating year, determined in accordance with 20-9-308.

MCA 20-9-310(5)

COUNTY PORTION OF DISTRIBUTION

The county's portion of the O&G taxes remaining after the above distributions must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

MCA 15-36-332(3)

The county's portion of the O&G tax monies remaining after the above distributions should be recorded as revenue (BARS Revenue Code #335065 – Oil & Gas Production Tax) in Fund No. 2899 – Oil & Natural Gas Production Taxes Fund. Local governments are required to conform to the accounting standards prescribed by the Department of Administration.

MCA 2-7-504(1)

Suggested Audit Procedures:

Verify that the county's portion of these O&G tax distributions has been recorded as revenue in the county's records and deposited in the county fund as specified above.

Review O&G tax expenditures from Fund No. 2899 to determine that they were for the exclusive use and benefit of the county, including districts within the county established by the county.

DISTRIBUTION TO EACH SCHOOL DISTRICT FUND

O&G taxes calculated for each school district, as discussed above, must be distributed to each school district fund as provided in 20-9-310(4) & (6) (as discussed below).

MCA 15-36-332(5)

District Budget & Allocation:

- (a) Subject to the limitation in subsection (1) and the conditions in subsection (4)(b), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.
- (b) Except as provided in subsection (4)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:
 - (i) the trustees shall levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;
 - (ii) the mills levied under subsection (4)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and

- (iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (4)(b)(i) must be added to the number of mills calculated in 20-9-141(2).
- (c) The provisions of subsection (4)(b) do not apply to the following:
 - (i) a district that has a maximum general fund budget of less than \$1 million;
 - (ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;
 - (iii) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which the provisions of this subsection (4) would otherwise apply; or
 - (iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

MCA 20-9-310(4)

In any year in which the actual O&G production taxes received by a school district are less than 50% of the total O&G production taxes received in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

MCA 20-9-310(6)

Suggested Audit Procedures

Calculate (OR obtain the district's calculations, and verify accuracy of) the total O&G taxes received by the district in the prior year. Compare this amount to the amount of the general fund levy requirement for the fiscal year being audited. Verify that the lesser of these two amounts is budgeted in the district's general fund.

Verify that the O&G tax revenue received by the district is deposited to the general fund until this budgeted amount is met.

Determine the total amount of O&G tax revenue that is in excess of the general fund budgeted amount, and determine that the total excess amount was deposited in another budgeted fund(s).

Note: While the district will know, at budget time, the maximum amount of O&G taxes that they will be *eligible* to receive, they will not know the amount that they will *actually* receive. Excess O&G may be deposited in a budgeted fund, but may not be expended out of that budgeted fund unless the budget was amended to appropriate the unanticipated O&G.



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

**METALLIFEROUS MINES LICENSE TAX
ALLOCATION**

REVISION JANUARY 2022

REF: REV7

INFORMATION CONTACT:

Montana Department of Commerce
Hard-Rock Mining Impact Board
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PROGRAM OBJECTIVES

The objective of the metalliferous mines license tax allocation is to help local government units, following a hard-rock mine's workforce reduction or closure, to stabilize mill levies, retire local government debt, and stabilize and diversify impact area economies. Counties, and school districts within the counties, also have the option to expend a portion of these allocations during the productive life of the mine. The portion which counties may expend during the productive life of the mine is limited to expenditures for planning and economic development purposes, primarily to enable them to strengthen and broaden the non-mining economic base of the impact area in order to reduce the adverse effect of the eventual mine closure.

PROGRAM PROCEDURES

Metal mine operations pay metalliferous mines license taxes annually on that portion of their gross proceeds that exceeds \$250,000 a year (MCA 15-37-103). The Department of Revenue (DOR) collects the taxes and distributes 35% of the proceeds to eligible counties. Counties that are eligible to receive this distribution are:

1. those identified in an impact plan approved under 90-6-307 as experiencing fiscal and economic impacts resulting in increased local government costs or increased employment, or
2. if there is no impact plan, those counties in which a mine is located.

A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

- (a) file a financial report required by 15-1-504;
- (b) remit any amounts collected on behalf of the state as required by 15-1-504; or
- (c) remit any other amounts owed to the state or another taxing jurisdiction.

MCA 15-37-117

Counties must reserve at least 37.5% of the money received in a hard-rock mine trust account and must allocate the balance among the metal mines license tax accounts of the county and the affected school districts within the county.

Although DOR is responsible for the allocation of the metalliferous mines license tax monies to the counties, it has no responsibility for the allocation or use of the tax moneys **within** the counties. The Hard-Rock Mining Impact Board of the Department of Commerce (the Board) also has no direct responsibility for these tax moneys. However, because the allocation of metalliferous mines license tax monies is related to provisions of the Hard-Rock Mining Impact Act and the Property Tax Base Sharing Act, over which the Board has jurisdiction, the Board has agreed to be a contact for information, and has provided the flowchart at the end of this section.

ALLOCATION OF METALLIFEROUS MINES LICENSE TAX MONEY RECEIVED FROM DOR

Upon distribution from the DOR, the money is allocated as follows: (MCA 15-37-117(1)(e))

- (1) **37.5% Allocated to County Trust Account:** At least 37.5% of the tax revenues must be deposited to the county Hard-Rock Mine Trust Account (BARS Fund No. 2895). The money must remain in the account and may not be appropriated by the governing body until (1) a mining operation has permanently ceased all mining related activity, OR (2) the number of persons employed full-time in mining activities by the mining operation is significantly reduced. If these conditions occur, the county must allocate the funds in Fund No. 2895 as provided for in MCA 7-6-2225(3) (**See Requirement No. 3, below, for further allocation if these conditions occur**). Money in Fund No. 2895 must be invested, and interest credited back to that fund. (MCA 7-6-2225)
- (2) **Balance Allocated to County & School Districts:** The remaining money (**62.5%**) must be allocated as follows:
- a. **33⅓% of the balance to the county** to be used by the county for general planning functions or economic development activities as described in 7-6-2225 (3)(c) through (3)(e) (**See Requirement No. 3, below, for authorized activities**). This money *may** be deposited in the Metal Mines License Tax Account (BARS Fund No. 2896) as a holding fund until expenditure. Money may be held in the fund for any time period the board of county commissioners considers appropriate and may not be considered as fund balance for the purpose of reducing mill levies. Moneys in the metal mines tax reserve fund must be invested, and interest and income from the investments must be credited back to the fund. (MCA 7-6-2226)
***Note:** There is no statutory requirement that BARS Fund No. 2896 be used. Instead, the county may distribute all or part of this amount to another fund or funds that account for planning or economic development activities. However, accounting must be detailed enough to document that these monies are expended per State law.
 - b. **33⅓% of the balance each to the elementary and high school districts within the county** that have been affected by the development or operation of the metal mine. These moneys may be deposited to the school district metal mines tax reserve fund (Fund No. 24, non-budgeted fund) if such a fund is established by the school district. Money may be held in the fund for any time period the school board considers appropriate and may not be considered as fund balance for the purpose of reducing mill levies. Money may be expended from the fund for any purpose provided by law. Moneys in the metal mines tax reserve fund must be invested, and interest and income from the investments must be credited back to the fund. (MCA 20-9-231)

Suggested Audit Procedures

Determine that, upon distribution from DOR, at least 37.5% of the metal mines license tax funds were deposited to the Hard-Rock Mine Trust Account (BARS Fund No. 2895).

Verify that the monies in the Hard-Rock Mine Trust Account fund (BARS Fund No. 2895) were invested during the audit period, and interest income was credited to the fund.

Verify that no disbursements were made from Fund No. 2895 until a mining operation has permanently ceased all mining related activity, or the number of persons employed full-time in

mining activities by the mining operation is significantly reduced, as discussed in Requirement No. 3, below.

Determine that, after the above 37.5% allocation, the remainder of the metalliferous mines license tax funds were allocated to the county and affected elementary and high school districts as specified in section (2), above.

Test expenditures made from the county's share of the metalliferous mines license taxes (Fund No. 2896 or other appropriate fund) to determine that the funds were used only for general planning functions or economic development activities. Verify that the county has adequate documentation to support compliance with this requirement.

ALLOCATION WHEN JURISDICTIONAL REVENUE DISPARITY IDENTIFIED

MCA 90-6-402 defines "jurisdictional revenue disparity" as "property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the [hard-rock mining impact] board in an approved impact plan." When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county is to distribute the proceeds of the metal mines license tax monies "in a manner similar to that provided for property tax sharing" under Title 90, Chapter 6, Part 4.
MCA 15-37-117(2)

When a jurisdictional revenue disparity is found to exist, State law requires that the DOR allocate the increase in taxable valuation of the large-scale mineral development (i.e. property tax sharing) in the manner specified in MCA 90-6-404.

Suggested Audit Procedures

Through inquiry and review of the impact plan, determine if a jurisdictional revenue disparity has been identified. If so, obtain documentation to support the allocation of metal mines license tax revenue that was directed by the county commissioners. Documentation may be found in (1) the annual report submitted by the mineral developer (this document may contain demographic information related to mining activities in support of a particular distribution); (2) the impact plan, filed in the County Planning office; and (3) tax base sharing information on file with the County Assessor.

Review resolutions adopted by the commissioners which document the rationale for distributing the metal mines license tax proceeds. Compare this rationale with the tax base sharing provisions of the impact plan to determine whether, given the differences in purposes, there appears to be a reasonable correlation.

ALLOCATION & USE OF LICENSE TAX MONIES UPON OCCURRENCE OF SPECIFIED CONDITIONS

The metalliferous mines license tax money allocated to the county Hard-Rock Mine Trust Account (BARS Fund No. 2895) must remain in that account and may not be appropriated by the governing body until:

- (1) a mining operation permanently ceases all mining activities, OR
- (2) the number of full-time employees in mining activities is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

MCA 7-6-2225(2)

If the circumstances in either (1) or (2), above, occur, the money must be allocated by the county as follows:

- (1) **Allocation to School Districts:** At least 1/3 of the funds proportionally to affected high school districts and elementary school districts in the county. (**Note:** The commissioners must determine what “proportionally” means in relationship to how much each district is expected to be affected by the workforce reduction or mine closure.)
- (2) **Allocation to County:** The remaining money is to be used by the county to:
 1. pay for outstanding capital project bonds or other expenses incurred prior to the end of the mining activity or the reduction in the mining work force;
 2. decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;
 3. promote diversification and development of the economic base within the jurisdiction of the local government unit, through assistance to existing business for retention or expansion, or to assist new business;
 4. attract new industry to the impact area;
 5. provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity; or
 6. provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity.

MCA 7-6-2225(3)

See also AGO #3, Vol. 53 (2009) (MCA 7-6-2225) for clarification of these allocations
<https://dojmt.gov/wp-content/uploads/2009/01/53-003.pdf>

Suggested Audit Procedures

Determine that the conditions of mine closure or workforce reduction, specified above, were met before any monies were distributed or expended from the county Hard-Rock Mine Trust Account fund.

Test distributions from the county Hard-Rock Mine Trust Account fund to verify that at least 1/3 of the monies, including interest earnings, were distributed proportionally to the affected elementary and high school districts in the county.

Test expenditures made from the county Hard-Rock Mine Trust Account fund to determine that monies were used for the purposes listed above. Verify that any grants and loans made from the

fund were made to local government units affected by the mine closure or reduction in mine workforce.

ALLOCATION OF METAL MINES LICENSE TAX

<https://comdev.mt.gov/Programs-and-Boards/Hard-Rock-Mining-Impact-Board/About-the-Board>



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

GASOLINE TAX APPORTIONMENT

REVISION JANUARY 2022

REF: TRA1

INFORMATION CONTACT:

Montana Department of Transportation (MDT)
Ed Erath (406) 444-6111

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See MACo's website "County Tax Resources: at <https://www.mtcounties.org/resources-data/county-fuel-tax/>.

PROGRAM OBJECTIVES

The State distributes a portion of the gasoline taxes collected by the State to counties, cities, towns, and consolidated city-county governments to be used for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys.

MCA 15-70-101(2)

PROGRAM PROCEDURES

The funds are distributed monthly by Montana Department of Transportation (MDT) to counties, cities and towns, and consolidated city-county governments. MCA 15-70-101 specifies the total amount to be distributed annually, as well as the method of allocation (based on road mileage, population, and land area).

Note: At the same time that MDT distributes these gasoline tax apportionments (MCA 15-70-101), MDT also distributes fuel allocations for State public transportation funds (MCA 7-14-102). In the payment message section of the warrant, the total amount is separated by each of the allocations.

See <https://www.mdt.mt.gov/business/fueltax/allocations.aspx> for additional information.

Local governments may use fund 2820 and revenue account 335040 for balances and revenues received from the standard MDT Gas Tax Allocation Program.

ALLOWED USE OF GASOLINE TAX APPORTIONMENT MONIES

All funds allocated to counties, cities, and towns, and consolidated city-county governments must be used for the following:

1. construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys, or
2. for the share that the city, town, county, or consolidated city-county governments might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems.

MCA 15-70-101(4)

A city may use its gas tax allocation to construct streets and highways, and because a highway is defined as including "drainage structures", the city may use its share of gasoline tax allocation for construction of storm sewers and drains in and under city streets for removal of runoff water. The city may also place the money allocated in a sinking fund used to pay general obligation

bonds sold to finance construction of those sewers, as the only statutory restriction on the use of the funds is that the funds must be used exclusively for city streets. Nor do the statutes governing municipal financing prohibit the use of such money in a sinking fund for general obligation bonds.

AGO #19, Vol. 40 (1983) (MCA 15-70-101)

If a city contracts for street construction work to be paid exclusively from gasoline tax revenue received from the state, the indebtedness is considered part of the city's general debt limitation under 7-7-4201 unless the conditions of some specific exception are otherwise met.

AGO #120, Vol. 42 (1988) (MCA 15-70-101)

Suggested Audit Procedure

Test disbursements of gasoline tax moneys to determine if the funds were used only for the purposes described above.

Note: State law does not specify a fund in which gasoline tax moneys should be deposited, although the expenditure restrictions require that the local government document the appropriate expenditure of these moneys. BARS Special Revenue Funds No. 2820 (Gas Apportionment Tax) or No. 2110 (County Road) should be used.

RESTRICTION ON PURCHASE OF CAPITAL EQUIPMENT

Gasoline tax moneys may not be used for capital expenditures, **except** that towns and third-class cities, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of the town's or city's streets and alleys.

MCA 15-70-101(4) & (8)

Capital Reserve for Towns & 3rd Class Cities: The governing body of a town or third-class city may place all or a part of the 25% in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure.

MCA 15-70-101(4)

Suggested Audit Procedures

Test expenditures in counties, first and second-class cities, and consolidated governments to determine that no gasoline tax moneys were used for the purchase of capital equipment.

Test expenditures in third-class cities and towns to determine that not more than 25% of the funds allocated to the city or town were used for the purchase of capital equipment and supplies to be used for the maintenance and repair of streets and alleys.

If a third-class city or town did not expend the entire 25% of its annual allocation on capital outlay during the year, determine that any remaining balance of that 25% was transferred to a restricted cash account. Any unexpended balance not restricted in this manner may **not** be used in subsequent years for capital purposes.

BIDDING REQUIREMENT

If a contract for maintenance, construction, reconstruction, or repair of roads, streets or alleys is in excess of **the amounts provided in 7-5-2301 and 7-5-4302 – see below** and is to be paid with gasoline tax moneys, the contract must be awarded to the lowest responsible bidder according to applicable bidding procedures.

MCA 15-70-101(5)

Contracts in excess of **\$80,000** must be let to the lowest responsible bidder after advertisement for bids.

MCA 7-5-2301 (county), MCA 7-5-4302 (municipalities)

Note: The court construed the provision to mean that the local government may do the work itself or contract it out by bid. Numerous other statutes relating to construction and repair of roads authorize the local government to do the work itself. It would not be reasonable to assume that only construction and repair funded by gas tax dollars must be contracted out. Attempts to require this by legislation in 1979 and 1985 failed, and the failure is significant. Finally, the entities administering that provision have for 12 years interpreted it to mean that a local government may do the work itself and must follow the provision only if the work is contracted out. *Mont. Contractors' Ass'n, Inc. v. Dept. of Highways*, (1986).

MCA 15-70-101

Suggested Audit Procedures

If a contract for maintenance, construction, reconstruction or repair of roads, streets, or alleys is in excess of the bidding threshold amount currently in effect and is paid with gasoline tax moneys, review bidding procedures and determine that funds were disbursed to the lowest bidder according to applicable bidding procedures.

Obtain the total cost for selected projects to determine if proper bidding procedures were followed for projects that are in excess of the bidding threshold amount currently in effect, and that the above bidding requirement was not circumvented by dividing single projects costing in excess of that amount into smaller projects costing less than that amount.

ADDITIONAL ALLOCATION OF GAS TAX – SPECIAL ROAD/STREET ALLOCATION PROGRAM

Gas Tax Road Construction and Maintenance Match Program:

- (1) There is 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 this section.
- (2) The department of transportation shall allocate funds provided for in 15-70-127(2)(b) collected between January 1 and December 31 of the previous year. The first allocations

must be made by March 1, 2018, and allocations must be made each March 1 thereafter. The funds provided for in 15-70-127(2)(b) are statutorily appropriated, as provided in 17-7-502, to the department and must be allocated to cities, towns, counties, and consolidated city-county governments in the same proportion and using the same ratios provided for in 15-70-101(2)(b), (2)(c), and (3).

- (3) A city, town, county, or consolidated city-county government that requests funds under this section shall match each \$20 requested with \$1 of local government matching funds. The funds distributed in 15-70-101(2) may not be used as matching funds. The matching funds must be used along with the requested funding for construction, reconstruction, maintenance, or repair of rural roads, city or town streets and alleys, or bridges.
- (4) A city, town, county, or consolidated city-county government may request a distribution of allocated funds by submitting a request to the department of transportation between March 1 and November 1 of the year the funds were allocated. The request must include:
 - (a) the amount of funding sought, which may not exceed the amount allocated for that year;
 - (b) a copy of an adopted resolution to request and accept the funding by the governing body of the city, town, county, or consolidated city-county government. The resolution must identify the source of the matching funds required under subsection (3).
 - (c) a description of the project or projects to be funded, which must be for construction, reconstruction, maintenance, or repair of rural roads, city or town streets and alleys, or bridges, as a match for federal funds used for the construction of roads and streets that are part of the national, primary, secondary, or urban highway systems, or roads and streets that the city, town, county, or consolidated city-county government has the responsibility to maintain.
- (5) A city, town, county, or consolidated city-county government receiving funds under this section shall award construction projects that exceed the thresholds provided for in 7-5-2301 and 7-5-4302 in a competitive bid process.
- (6) Except as provided in subsection (9), the department of transportation shall distribute the funds to the city, town, county, or consolidated city-county government for any request for funds that meets the requirements of subsection (4).
- (7) Funds not distributed pursuant to this section must remain in the account provided for in 15-70-127 and be used for the local government road construction and maintenance match program in future years.
- (8) A city, town, county, or consolidated city-county government that receives funding distributed under this section may place all or a part of the funds and the corresponding matching funds in a restricted asset account within the gas tax apportionment fund that is carried forward until there is a need for the expenditure. The city, town, county, or consolidated city-county government shall obligate the funds by March 1, 5 years after the year in which the funds were distributed or would have been distributed if not reserved pursuant to subsection (9). Funds not obligated within the 5-year period must be returned to the department and deposited in the account provided for in 15-70-127 and used as provided in 15-70-127(2)(b).
- (9) The share of funds allocated to a city, town, county, or consolidated city-county government as provided in subsection (2) may be reserved for the city, town, county, or consolidated city-county government for up to 2 years if the city, town, county, or consolidated city-county government is unable to match the funds as required by

subsection (3). To reserve the funds, the city, town, county, or consolidated city-county government shall adopt a resolution as provided in subsection (4)(b) and submit a request to reserve the funds by November 1 of the year after the year in which the department allocated the funds. If the city, town, county, or consolidated city-county government does not request distribution of the funds by November 1 of the fiscal year 2 years after the request to reserve the funds, the funds must be deposited in the account provided for in 15-70-127 and used as provided in 15-70-127(2)(b).

- (10) A city, town, county, or consolidated city-county government shall submit an annual report to the department providing information on approved projects, changes to the list of projects funded, and final project costs.
- (11) Within 90 days of completion of a project, a city, town, county, or consolidated city-county government shall notify the department of the intent to use the funds for additional projects within the time period provided for in subsection (8) or to remit any unused funds to the department. The unused funds must be deposited in the account provided for in 15-70-127 and used as provided in 15-70-127(2)(b).

MCA 15-70-130

See <https://www.mdt.mt.gov/roadbridge/> and <https://www.mtcounties.org/resources-data/barsaa/> for additional information.

Local governments may use BARS fund 2821 and BARS revenue account 335041 for balances and revenues received from the Special Road and Street Maintenance and Construction Allocation/matching Program