

# Flexibility and Efficiency – Deep Dive Session – HB 247 Major Maintenance Loans, the New Natural Resource Development Payment

## 1. Authorizing legislation by year and bill number.

66th Legislature

HB0247



AN ACT REVISING SCHOOL FUNDING RELATED TO MAJOR MAINTENANCE PROJECTS; AUTHORIZING TRUSTEES TO ISSUE OBLIGATIONS FOR LIMITED PURPOSES TO CERTAIN FINANCIAL INSTITUTIONS IN ADDITION TO THE BOARD OF INVESTMENTS; REQUIRING TRUSTEES TO GIVE THE BOARD OF INVESTMENTS THE RIGHT OF FIRST REFUSAL; CLARIFYING THE AUTHORITY OF TRUSTEES TO UTILIZE REVENUES IN THE BUILDING RESERVE FUND TO REPAY THESE OBLIGATIONS; AMENDING SECTIONS 20-9-471 AND 20-9-525, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

## 2. Summary of what the bill allows.

- a. House Bill 247 specifically authorizes a school district to secure loans or issue and sell obligations for the purpose of paying for major maintenance projects authorized by Senate Bill 307, 2017 Legislature (codified at 20-9-525, MCA).
- b. Under House Bill 247, the right of first refusal has to be offered to the Board of Investments. Given the Board's rates at 3.37% and no origination fee, this is likely the best option to pursue if available anyway.
- c. If the Board fails to exercise its option to issue the loan, a school district can then secure the loan from the private sector, from "a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111."
- d. As to the InterCap program, the following information applies:

The [INTERCAP program](#) only loans funds to eligible government units as defined under [17-5-1604](#), MCA.

1. The INTERCAP program is a variable rate loan program.
  2. Interest rates are adjusted on February 16th of each year.
  3. 100% financing is available with no up-front cost, equity, or matching funds required.
  4. Interest and principal payments are due semi-annually on February 15th and August 15th.
  5. Current interest rate through February 15, 2020 is 3.37%
  6. Loan requests in excess of \$1,000,000 must receive Loan Committee approval.
  7. Loan requests in excess of \$5,000,000 must receive Board approval.
  8. Use of loan funds has significant flexibility, e.g. new and used equipment and vehicles, real property improvements, cash flow, preliminary engineering costs, grant writing.
  9. Prepayments are allowed without any prepayment penalty.
  10. Maximum loan limit is established by eligible government unit's legal debt limit.
  11. Maximum term of the loan is 15 years or useful life of the project, whichever is less.
- e. **By the Numbers:** The lending authority provided by House Bill 247 is significant on a number of fronts.
    - i. First, it provides the promise of access to funds well in excess of what schools can spend on repairs if they "pay as they go." Rather than a total annual expenditure of \$23 million (which is the approximate

statewide total between estimated local levies at \$12.5 million and \$10.5 million in matching state NRD funds), schools could collectively finance and authorize immediate repairs to school facilities throughout the state in excess of \$250 million.

1. For example, using the current Board of Investment rate of 3.37%, an annual debt service payment of \$23 million would fund nearly \$275 million in immediate repairs.
  2. With all other things being equal, you should be able to secure a loan in your district that will fund repairs costing 10-12 times what your annual major maintenance levy and matching state funds yield.
- ii. Another reason to consider a major maintenance loan is that it will protect your levy authority for the entire term of the loan after issued, even in the face of legislative changes. This is because both the United States (Article I, Section 10) and Montana (Article II, Section 31) Constitutions prohibit the passage of any law that impairs vested contract rights.

## 1. Identification of all applicable sections of law.

### a. 20-9-471

**"20-9-471. Issuance of obligations -- authorization -- conditions.** (1) The trustees of a school district may, without a vote of the electors of the district, secure loans from or issue and sell to the board of investments or, as provided in subsection (2), a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in 31-1-111, obligations for the purpose of financing all or a portion of:

(2) (a) Before seeking to secure a loan or issue and sell obligations to a regulated lender specified in subsection (1), the trustees shall first offer the board of investments a written notice of the board's right of first refusal.

(b) If the board of investments accepts the offer to issue a loan or purchase obligations, the board shall provide a written response to the trustees by the later of:

(i) 120 days following delivery of the trustees' offer to the board; or

(ii) the day after the next meeting of the board of investments.

(c) If the trustees have not received a written acceptance by the deadline provided for in subsection (2)(b), the trustees may seek to secure a loan or issue and sell an obligation to a regulated lender specified in subsection (1).

### b. 20-9-525 (focus on new language in subsection (2))

**"20-9-525. School major maintenance aid account -- formula.** (1) There is a school major maintenance aid account in the state special revenue fund provided for in 17-2-102.

(2) [Subject to legislative fund transfer,] the purpose of the account is to provide, contingent on appropriation from the legislature, funding for school major maintenance aid as provided in subsection (3) for school facility projects, including the payment of principal and interest on obligations issued pursuant to 20-9-471 for school facility projects, that support a basic system of free quality public elementary and secondary schools under 20-9-309 and that involve:

## Applicable legislative history.

- a. Section 20-9-471 has long provided school districts with the right to issue obligations without a vote to pay for certain capital expenditures, including ***“the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems.”***
- b. Section 20-9-471 has also long made this authority contingent upon a school district’s ability to service the debt on such obligation through one of its budgeted funds:

*20-9-471(3) “At the time of issuing the obligation, **there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.”***

- c. Upon passage of Senate Bill 307 in the 2017 Legislative Session, which provided school districts with major maintenance levy authority (and a promised matching Natural Resource Development Payment) in its building reserve fund, MT-PEC asserted that school districts could pledge the revenue from their major maintenance levies to service the debt on a 20-9-471 loan from/obligation issued to the Board of Investments. After some initial pushback at the bureaucratic level within the Board of Investments, the Board’s staff acknowledged that authority existed in then-current law to issue 20-9-471 obligations on major maintenance.

**From:** "Welsh, Louise" <Lwelsh@mt.gov>

**Date:** Wednesday, May 2, 2018 at 3:18 PM

**To:** "Wanner, Kathleen" <KWanner@mt.gov>

**Cc:** "Sperle, Kara" <KSperle2@mt.gov>, "Semmens.Dan@dorsey.com"

<Semmens.Dan@dorsey.com>, "Tricia Elpel (Elpel.Tricia@dorsey.com)"

<Elpel.Tricia@dorsey.com>, "ellis.courtney@dorsey.com"

<ellis.courtney@dorsey.com>, Lance Melton <lmelton@mtsba.org>, "Flynn, Julie"

<JFlynn2@mt.gov>

**Subject:** MBOI INTERCAP loan application - building reserve permissive levy

Good afternoon Kathleen, the school districts may now submit INTERCAP loan applications requesting BOI’s consideration of the building reserve permissive levy as a source of loan repayment. Each loan will be reviewed with the following guidelines and additional loan terms and conditions:

[Credit analysis guidelines](#)

- ✓ The applicant's Dept. of Administration, Architect & Engineering Division, Facility Condition Inventory (FCI) Report needs to accompany each loan application as verification the project requesting to be financed is listed on the state approved list.
- ✓ The standard credit analysis ensuring the General Fund (GF) is in good and stable financial condition will apply.
- ✓ The standard term of 15 years or useful life of the project, whichever is less, will apply.
- ✓ The review may include any combination of the GF and Building Reserve Permissive (BRP) Fund to determine the repayment ability constricting the revenue stream available for debt service in the BRP Fund to the School Major Maintenance Amount (SMMA) or 10 mill (20 for K-12) max levy, as defined in 20-9-502(3), whichever is less, while taking into consideration potential declines in taxable values, number of students and/or available tax receipts.
- ✓ Non-levy resources such as Impact Aid, Oil & Gas, or PILT, may be considered on a case by case basis.

#### Additional Loan Terms and Conditions

- 1) The loan will be in the form of a general promise to pay note and payable from amounts in the District's General Fund or any other legally available funds including but not limited to the Building Reserve Permissive Fund, a subfund of the Building Reserve Fund.
- 2) By every March 31, the District must pass a preliminary resolution authorizing the 20-9-502(3), MCA building reserve permissive levy to be used to repay the debt. The preliminary resolution must describe the levy amount sufficient to pay the debt service on the loan in the coming year, loan maturity, the Facility Condition Inventory (FCI) Report project financed and that the project falls within the parameters of both 20-9-471(1)(b) and 20-9-525(2), MCA.
- 3) If imposing the building reserve permissive levy for the first time or an increase is anticipated, the District must ensure public notice is completed in accordance with 20-9-116, MCA.
- 4) The District must annually budget for the debt service in accordance with school budget laws Title 20, Chapter 9, Part 1 and ensure the levy to repay the debt service for the coming year is imposed by tracking the progress and completion of the process to do so in accordance with 20-9-133 through 20-9-152, MCA, as applicable.
- 5) No additional debt service or new projects may encumber the Building Reserve Permissive Fund without the Board's written permission for the term of the loan.

Please let me know if there are any questions. Thank you!

LOUISE WELSH  
Senior Bond Program Officer

- d. However, given the self-imposed cap on such loans (approximately \$95 million) and even with the larger statutory cap (\$190 million, per 17-5-1608), it became apparent that major maintenance levy loans could significantly exceed the lending capacity of the Board of Investments if everyone sought a loan in the full amount authorized by law.
- e. The School Administrators of Montana passed a resolution calling for a solution to this issue and SAM and MTSBA took the lead in crafting and negotiating changes to House Bill 247 such that it passed with support from both the Board of Investments and the private banking industry.

**2. Interpretations by OPI and/or others with regulatory authority.**

- a. None as of yet, but there is little to no ambiguity in the law. Loans are now authorized using major maintenance proceeds, from either the Board of Investments, or, if they refuse, from the private banking industry.

### 3. MTSBA model policy number

3 **FINANCIAL MANAGEMENT**

7215

4

5 Obligations and Loans

6

7 The District may, without a vote of the electors of the District, secure loans from or issue and sell  
8 to the board of investments or a bank, building and loan association, savings and loan  
9 association, or credit union that is a regulated lender under Montana law, obligations for the  
10 purpose of financing all or a portion of:

11

12 (a) the costs of vehicles and equipment and construction of buildings used primarily for  
13 the storage and maintenance of vehicles and equipment;

14 (b) the costs associated with renovating, rehabilitating, and remodeling facilities,  
15 including but not limited to roof repairs, heating, plumbing, electrical systems, and cost-  
16 saving measures as defined in Montana law;

17 (c) the costs of nonpermanent modular classrooms necessary for student instruction when  
18 existing buildings of the district are determined to be inadequate by the trustees;

19 (d) any other expenditure that the district is otherwise authorized to make including the  
20 payment of settlements of legal claims and judgments; and

21 (e) the costs associated with the issuance and sale of the obligations.

22

23 Before seeking to secure a loan or issue and sell obligations to a regulated lender, the District  
24 shall first offer the board of investments a written notice of the board's right of first refusal. If  
25 the board of investments accepts the offer to issue a loan or purchase obligations, the board shall  
26 provide a written response to the trustees by the later of:

27

28 (a) 120 days following delivery of the trustees' offer to the board; or

29 (b) the day after the next meeting of the board of investments.

30

31 If the trustees have not received a written acceptance by the deadline the District may seek to  
32 secure a loan or issue and sell an obligation to a regulated lender as outlined in this policy and  
33 Montana law.

34

35 The District may access its major maintenance aid account for school facility projects, including  
36 the payment of principal and interest on obligations issued in accordance with this policy and  
37 Montana law for school facility projects,

38

39 Legal Reference: Section 20-9-471, MCA - Issuance of obligations

40 Section 20-9-525, MCA - School major maintenance aid account

41 Policy History:

42 Adopted on:

43 Reviewed on:

44 Revised on:

**Any specific steps required prior to implementation.**

- a. March 31 notice.
- b. Board approval
- c. Adoption of any specific policy
- d. Deadlines for acting as applied to particular fiscal year

#### **4. Relevant Links:**

- a. Senate Bill 307, 2017 Legislature
- b. Senate Bill 247, 2019 Legislature
- c. [OPI Building Reserve Fund Guidance Document 2018](#)
- d. [MTSBA Discussion Board Link](#) to Use of Major Maintenance Levy Proceeds for 20-9-471 loans