

MONTANA PUBLIC BOND LAW 101¹

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- What is a “**bond**”?
 - A “**bond**” generally covers loans issued by a governmental entity. So long as certain restrictions are observed, the interest paid on a bond is tax-exempt (some private entities are authorized to issue tax-exempt bonds as well—such bonds are not covered in this presentation).
 - Common public issuers include Municipalities, Counties, Water and Sewer Districts, Rural Improvement Districts, Special Improvement District, and Special Districts
- **Types of Bonds**—bonds are typically identified via their security (i.e. source of payment)
 - **General Obligation Bond:** a bond secured by an *ad valorem* tax on real property² located within the boundaries of the issuing entity.
 - Election nearly always required—see below for other issuance requirements
 - **Revenue Bond:** A bond secured by a specifically identified revenue stream—such as user rates paid for water or sewer service.
 - Election sometimes required (see below for when)
 - **Special Assessment Bond:** A bond secured by an assessment collected semiannually with property taxes which is levied against each property benefitted by the Improvement and for which a lien is created.
 - No election³, but subject to defeat by public protest during comment period.

¹ A *very basic and summary* introduction intended to highlight some of the main features of public bond law in Montana relevant to USDA Rural Development financings.

² An *ad valorem* tax is a tax levied based on the assessed value of the property, not based on any specific benefit conferred on the property. E.g., a \$600,000 house and a \$300,000 are likely equally benefitted by a drinking water connection, but an *ad valorem* tax would tax the higher valued house twice as much as the lower valued house. Conceptually the opposite of special assessments which are payments levied for a specific benefit conferred.

³ There is kind of an exception for Special Districts, see below.

- **Other:** tax increment financing, refunding bonds, etc.
- **Issuance Requirements**—the requirements vary slightly depending on the type of Issuer
 - **General Obligation Bond**
 - 1) Assess legality of using a GO bond to finance the Project—each issuer will have specific statutory authority defining the types of projects which can be funded with GO bonds.
 - Counties: Title 7, Chapter 22, Montana Code Annotated
 - Municipalities: Title 7, Chapter 7, M.C.A.
 - Water & Sewer Districts: Title, 7, Chapter 13, Part 23, M.C.A.
 - Other Districts: uncommon but allowed, see general bond law in Title 7, Chapter 6, Part 40, MCA
 - 2) Identify GO Debt Limitation—some issuers have a statutory cap on the amount of GO debt they can issue.
 - Municipality: 2.5% of the total assessed value of taxable property, within the city or town, as ascertained by the last assessment for state and county taxes. 7-7-4201, MCA.
 - County: 2.5% of the total assessed value of taxable property within the county as ascertained by the last assessment for state and county taxes. 7-7-2203, MCA.
 - Water & Sewer District: no limitations.
 - 3) Hold election: If turnout exceeds 40%, then bond is approved by simple majority of votes cast; if turnout is between 30% and 40% then bond must be approved by 60%; If turnout is less than 30% then bond issue fails.
 - Note: Municipalities can issue Limited GO Bonds without elections, secured by general fund—so long as consistent with debt limits in 7-7-4104, MCA.
 - Election exception: Municipalities can issue limited general obligation bonds without an election that is secured by the general fund, with no tax backing, so long as certain statutory requirements are met. See 7-7-4104, MCA.

○ **Revenue Bond:**

- **Election**—not generally required but may be required in the following situations:
 - **Certain County Large Issues:** Counties need to have elections to authorize certain large loans. The specific formulas for defining such large loans are found at 7-7-2402, MCA.
 - Lender desires a **deficiency tax as security**.
 - Counties and water and sewer district can levy a bond deficiency tax on all benefitted properties in the event revenues are insufficient to pay debt service if bond issue was authorized by election.
- **No Election**—governing body needs simply pass a resolution authorizing issuance, but only after implementing rates sufficient to cover debt service, reserves, and O&M.
 - Issuers will be required to hold a rate hearing (timing for notice differs by issuer). Rate increase is not defeated by protests, but rates must be reasonable and thus must take into consideration protests.
 - **Common Rate Considerations:**
 - Flat rate per EDU based on connection size vs metered system.
 - Rates charged to unimproved properties—allowed by cities, counties, and water & sewer district but only on finding of direct benefit.
 - Seasonal rates: allowed but difficult to define and enforce.
 - Delinquent rates can be collected with taxes against delinquent property (assuming compliance with specific statutory process), but not general deficiency tax available without an election.
 - Revenue Bonds need to be self-supporting, with rates sufficient to cover debt service and O&M—only exception is for resort taxes or appropriated property taxes. See, e.g. 7-7-4424, MCA

- **Forced Connections:** Only municipalities and counties have the police power to force connections to a water or sewer system.
- **Special Assessment Bond:**
 - Identify what kinds of projects the issuer can finance with special assessments:
 - *Municipalities:* Must create a SID including only benefited properties within the District.
 - List of specific projects that can be financed by SIDs available at 7-12-4102, MCA—includes sewer, drinking water, and stormwater projects.
 - Limited ability to include adjacent county properties.
 - Protest Period-- may be defeated by written protests if filed by owners bearing more than 50% of the project cost, unless the SID is being created to finance a sewer system then the protest must exceed 75%. In event of defeat, cannot resubmit for 6-months.
 - *County:* can create RID or Special District depending on nature of project
 - RID—can be created to fund same type of projects as SIDs outside of municipalities. See 7-12-2102, MCA.
 - Limited ability to include adjacent municipal properties.
 - Public protest: may be defeated by written protests if filed by owners bearing more than 50% of the project cost. Exceptions exist for unanimous vote of board of county commissioners where there is DEQ or EPA order, or specific finding of existing environmental harm to be mitigated by project. See 7-12-2112, MCA.
 - Special District—is a single purpose governmental entity with its own governing board which can encompass multiple jurisdictions even if benefitted parcels are not contiguous.

- Allowable purposes listed in 7-11-1002, MCA. Includes solid waste districts and fair districts.
 - District Creation: Initiated by petition or county commissioner vote. Then a public protest period—if protest exceeds 50% of properties bearing the costs of the program or project then SD fails for the next 12 months. If protest is between 10% and 50%, then an election is held on the question of creation. See 7-11-1008, MCA.
 - Once Special District is created, future improvements can be funded with assessments levied after a public hearing but with no possibility to defeat the assessment via a protest.
- *Water & Sewer District*: Can levy special assessments unless defeated by protest exceeding 50% of cost of the project—no exceptions.
 - Note that sub-districts can be established consisting of only parcels benefited by the proposed improvement—they need not be contiguous. See 7-13-2349, MCA
- Identify Assessment method (see e.g. 7-12-2151, MCA for counties and water and sewer districts)—can only be levied against benefited parcels and the general rule that any of the below methods must result in an assessment that doesn't exceed the "benefit received". The following are common options, but can vary slightly based on the type of issuer:
 - Ratio of assessable area of each parcel to the total assessable area of the District
 - Ratio of assessed value of parcel to the total assessed value of the District
 - For street improvements—share of lineal feet abutting the parcel.
 - Equal amount per parcel—to be reassessed if the number of benefitted parcels increases.

- For utility project--equitable lump sum for the connection based on the bid price in the applicable contract.
 - Assessment Adjustments: There can be no “material increase” in the amount of a special assessment after the public protest period without redoing the public protest process. No bright line, but the Montana Supreme Court has held 7.5% is too much. See *Koich v. Helena*, 132 Mont. 194, 203, 315 P.2d 811, 816 (1957).
 - Assessment Timing: Final Assessment amount and property list must be delivered to the County Assessor by First Thursday after first Tuesday in September.
 - Assessment Prepayment
 - All assessments (except those levied by Special Districts) are pre-payable in whole at any time.
 - Need to be mindful of cashflow considerations when using CDBG direct benefit grant to prepay large number of special assessments up front—may either reduce principal amount of bond prior to issuance amount or reamortize debt.
- **Other Financing Considerations:**
 - Bond Term limitations:
 - GO Bonds: 20 years
 - Water and Sewer District: 40 years on all debt.
 - Municipal & County Revenue Bonds: 40 years
 - SIDs: 20 years for new Projects, 30 years for refunding bond.
 - RIDs: 20 years for new Projects, 30 years for refunding bond.
 - Bond Anticipation Notes: Issuers may issue a short-term (up to 3-year term) bond for Project costs if the issuer has a federal or state commitment for the long-term financing of the project. See 7-7-109, MCA
 - Sources typically include Montana State Revolving Fund (managed by DNRC), Montana Board of Investments, local bank, and some national lenders.
 - Repayment schedule: note that the frequency of collection of the funds securing the bond issue will influence payment schedule (e.g. semiannually or monthly) and timing of closing the bond issue.

- Limitation on Action to Test Bond Validity: Civil action must be filed within 30 days of the bond resolution. See 7-7-104, MCA.
 - Exception: Specific owners may challenge reasonableness of rate or special assessment charged to them at a later date as they are assessed, if they follow specific statutory processes.