

HOUSE BILL NO. 56

INTRODUCED BY J. DOOLING

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; REMOVING THE SET-ASIDE PERCENTAGE OF THE STATE'S VOLUME CAP AND ALLOWING MORE FLEXIBILITY WITHIN STATE LAW; UPDATING TERMINOLOGY PERTAINING TO ANNUAL COMPREHENSIVE FINANCIAL REPORTS; AMENDING SECTIONS 17-5-205, 17-5-1302, 17-5-1312, 17-5-1313, 17-5-1316, 17-5-1318, AND 17-5-2201, MCA; AND PROVIDING EFFECTIVE DATES."

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

**Section 1.** Section 17-5-205, MCA, is amended to read:

**"17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~April 8, 2024~~ [the effective date of this act]."

**Section 2.** Section 17-5-1302, MCA, is amended to read:

**"17-5-1302. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Allocation" means an allocation of a part of the state's volume cap to an issuer pursuant to this part.
- (2) "Board" means the board of examiners.
- (3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.
- (4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.
- (5) "Department" means the department of administration.
- (6) "Governmental bonds" means bonds other than private activity bonds.
- (7) "Issuer" means a state issuer or local issuer.

1 (8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized  
2 to issue private activity bonds or governmental bonds.

3 (9) "Local portion" means that portion of the state's volume cap reserved for local issuers.

4 ~~(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.~~

5 ~~(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.~~

6 ~~(12) "Montana facility finance authority" (MFFA) means the authority provided for in 2-15-1815.~~

7 ~~(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit  
8 corporation established to provide student loan capital to the student loan program established by the board of  
9 regents of higher education under Title 20, chapter 26, part 11.~~

10 ~~(14)(10)~~—"Private activity bonds" (PABs) has the meaning prescribed under section 141 of the  
11 Internal Revenue Code, 26 U.S.C. 141.

12 ~~(15)(11)~~—"State issuer" means the state and any agency, board, or authority of the state  
13 authorized to issue private activity bonds. ~~For this part only, the Montana higher education student assistance  
14 corporation, to the extent authorized under federal law to issue private activity bonds, is considered a state  
15 issuer.~~

16 ~~(16)(12)~~—"State portion" means that portion of the state's volume cap reserved for state issuers.

17 ~~(17)(13)~~—"State's volume cap" means that amount of the volume cap specified by the  
18 department pursuant to 17-5-1311(2).

19 ~~(18)(14)~~—"Tax act" means the latest limitation enacted by the United States congress on the  
20 amount of cap bonds that may be issued by a state or local issuer.

21 ~~(19)(15)~~—"Volume cap" means, with respect to each calendar year, the principal amount of cap  
22 bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."  
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24 **Section 3.** Section 17-5-1312, MCA, is amended to read:

25 **"17-5-1312. Allocation to state issuers.** (1) Except as provided in subsection ~~(6)~~ (3), the state  
26 portion must be allocated to state issuers pursuant to 17-5-1316.

27 (2) As a condition of receiving an allocation, each state issuer:

28 (a) ~~upon~~ on issuance of the bonds, shall pay 35 cents per thousand of bonds to be deposited in

1 the state general fund for the purpose of funding a portion of the ~~comprehensive-annual~~ comprehensive  
2 financial report audit; and

3 (b) shall provide the legislative auditor with full access to its financial records.

4 ~~(3) As long as the Montana higher education student assistance corporation requests and receives~~  
5 ~~authority to issue bonds under this part, the corporation shall:~~

6 ~~(a) comply with the provisions of Title 2, chapter 3, in all meetings of the corporation's board of~~  
7 ~~directors or other governing body unless compliance would conflict with federal or state security disclosure~~  
8 ~~laws; and~~

9 ~~(b) provide the legislative auditor with full access to any management or loan servicing contracts.~~

10 (3) Through the first Monday in September, allocations of the state portion must be made by the  
11 department to state issuers pursuant to 17-5-1316. After the first Monday in September, the state portion  
12 expires and any unallocated and unused state portion remaining must be allocated by the department as the  
13 state's volume cap to issuers pursuant to 17-5-1316 without preference."

14 ~~(4) The following set-aside percentages of the state's volume cap must be made in each calendar~~  
15 ~~year for the following state issuers:~~

State Issuer	Percentage
Board	4%
MBH	41%
MBI	25%
MHESAC	26%
MFFA	4%
Total	100%

16 ~~(5) Each set-aside expires on the first Monday in September.~~

17 ~~(6) Prior to the set-aside expiration date, allocations may be made by the department to each state~~  
18 ~~issuer only from its respective set-aside pursuant to 17-5-1316 and a state issuer is not entitled to an allocation~~  
19 ~~except from its set-aside unless otherwise provided by the governor.~~

20 ~~(7) After the expiration date, the amount of the set-aside remaining unallocated is available for~~  
21 ~~allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."~~

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**Section 4.** Section 17-5-1313, MCA, is amended to read:

**"17-5-1313. Allocation to local issuers.** (1) The local portion must be allocated by the department pursuant to 17-5-1316, and through the first Monday in September, no local issuer is entitled to an allocation except from the local portion set-aside.

(2) No more than ~~\$20~~ \$40 million of the local portion may be allocated for a single project or purpose prior to the first Monday in September of each year.

(3) After the first Monday in September, the local portion expires and any unallocated and unused local portion remaining must be allocated by the department as the state's volume cap to issuers pursuant to 17-5-1316 without preference, ~~priority, or limitation.~~"

**Section 5.** Section 17-5-1316, MCA, is amended to read:

**"17-5-1316. Allocations by the department.** (1) The department shall administer the allocation of the state's volume cap bonds to issuers in accordance with ~~this section and~~, 17-5-1312, ~~and~~ 17-5-1313, and this section. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

- (a) the name of the issuer;
- (b) a description of the purpose or purposes for which the proceeds of the ~~state's volume cap~~ bonds will be used, including, if appropriate, a description of the project or projects to be financed;
- (c) the location of the project or projects;
- (d) the name and address of each project owner and user;
- (e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the ~~state's volume cap~~ bonds;
- (f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the ~~state's volume cap~~ bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;
- (g) evidence that all public hearing requirements concerning the proposed purpose and project

1 have been met;

2 (h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its  
3 opinion the proposed financing is feasible, that the ~~state's volume~~ cap bonds may be successfully sold under  
4 current market conditions, and that it has reviewed all of the information necessary to form its opinion;

5 (i) the amount of allocation requested; and

6 (j) ~~such any~~ other information as the department considers necessary.

7 (2) The department shall issue allocations in chronological order of the receipt of completed  
8 applications. Completed applications received by the department on the same day must be ranked according to  
9 the earliest inducement resolution or official action date."

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11 **Section 6.** Section 17-5-1318, MCA, is amended to read:

12 "**17-5-1318. Terms of allocations.** (1) Unless terminated earlier by the issuer, an allocation is valid  
13 for ~~90~~ 120 days from the date the department mails the notice of approval. Prior to the expiration of the ~~90~~ 120-  
14 day period, the department may extend the period of validity for an additional 30 days ~~upon~~ on presentation of  
15 evidence that an agreement to purchase the ~~state's volume~~ cap bonds for which the allocation was given has  
16 been obtained from an entity legally authorized to purchase them.

17 (2) If the ~~state's volume~~ cap bonds are not issued within the period of validity as determined under  
18 subsection (1), the allocation automatically expires.

19 (3) All allocations expire on December 31 of the year in which they were made. However, this  
20 subsection does not limit the term of an allocation for which a valid carryforward election has been made."

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22 **Section 7.** Section 17-5-2201, MCA, is amended to read:

23 "**17-5-2201. Fee for issuance of bonds.** Except for issuers of general obligation bonds that are  
24 payable solely by general fund revenue and as provided in 17-5-1312(2)(a), each state bond issuer shall, ~~upon~~  
25 on issuance of the bonds, pay 30 cents per thousand of bonds unless another fee is specifically provided for a  
26 type of bonds. The fee must be deposited in the state general fund for the purpose of funding a portion of the  
27 ~~comprehensive~~ annual comprehensive financial report audit."

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