



Montana Legislative Services Division

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To: Legislative Leadership
From: Todd Everts, Jaret Coles, and Julie Johnson
Re: Preliminary Overview of CARES Act and Relief Fund for Governments
Date: March 26, 2020

Congress is set to pass the "Coronavirus Aid, Relief, and Economic Security Act" or the "CARES Act". We have been asked to analyze the provisions of the Act to determine whether legislative action is required for the State of Montana to make emergency expenditures in accordance with the Act. This brief overview does not address stimulus revenue replacement issues which need further analysis and direction from the federal government. In addition, CARES Act language that we have reviewed is subject to change until ultimate passage of the Act.

The bill is approximately 880 pages long and offers a wide range of relief related to the ongoing pandemic.

Title VI, section 601, of the CARES Act appropriates \$150 billion of funding to states, tribal governments and to certain qualifying units of local government. These monies are to be available no later than 30 days after the enactment of the Act.

The amount paid to a state is based on its population, however, the minimum payment to a state is \$1.25 billion. Montana will receive the minimum payment. The Act also provides for direct payments to units of local governments if its population exceeds 500,000 residents. Since Montana does not have a qualifying unit of local government, the entirety of the \$1.25 billion will be disbursed to the state.

The Act also provides for \$8 billion in payments to tribal governments. It appears the Secretary of the Treasury, in conjunction with the Secretary of the Department of the Interior determines the amount a tribal government will receive based on increased expenditures of the tribal government.

Section 601(d) of the CARES Act governs the use of funds and provides as follows:

A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

(2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Therefore, funds received by the State of Montana under Section 601 of the CARES Act may only be used for necessary expenditures incurred due to the public health emergency. The funds cannot be used in place of funds that were appropriated by the Legislature in the 2019 Session. Finally, the funds must be used for expenses incurred between March 1, 2020, and the end of the calendar year.

If it is later determined that a state has failed to comply with 601(d), an amount equal to the amount of funds used in violation will be booked as a debt of the state owed to the federal government. Section 601(f)(2).

Section 10-3-203, MCA, governs the use of emergency funds received from the federal government and provides:

Acceptance of services, gifts, grants, and loans. (1)

Whenever the federal government or any agency or officer of the federal government offers to the state. . . funds . . . for purposes of emergency or disaster services, the state, acting through the governor. . . may accept the offer. Upon the acceptance, the governor of the state. . . may authorize any officer of the state . . .to receive the . . . funds on behalf of the state . . . and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds . . .set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1)

Section 10-3-203, MCA, authorizes the Governor to accept the funds received under the CARES Act, and they are statutorily appropriated pursuant to 17-7-502, MCA. The funds may only be used for the purposes specified in Section 601(d).

Because section 10-3-203, MCA authorizes that funds received under the CARES Act are statutorily appropriated, no legislative action is required to appropriate those funds for emergency expenditures due to the public health emergency in accordance with the CARES Act.