

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the adoption of New )  
Rules I and II pertaining to distribution ) NOTICE OF PUBLIC HEARING ON  
of oil and gas production taxes ) PROPOSED ADOPTION

TO: All Concerned Persons

1. On April 29, 2016, at 9:00 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's conference room, 1227 11th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Superintendent of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on April 22, 2016, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this chapter.

(1) "Directly impacted by oil and gas development" means school districts in counties that had oil or natural gas production in FY 2015 or that are surrounded on their Montana borders by counties that had oil and natural gas production in FY 2015.

(2) "Excess oil and natural gas production taxes" means oil and natural gas production taxes that the Department of Revenue deposits into the state school oil and natural gas distribution account provided for in 20-9-520, MCA.

(3) "Quality educator" has the same meaning as the term is defined in 20-9-327(3), MCA.

(4) "School unit" means:

- (a) 800 ANB for a high school district;
- (b) 250 ANB for the K-6 ANB of an elementary district with an approved junior high school, 7th and 8th grade program, or middle school;
- (c) 250 ANB for the K-8 ANB of an elementary district without an approved junior high school, 7th and 8th grade program, or middle school; and
- (d) 450 for the 7th and 8th grade ANB of an elementary district with an approved junior high school, 7th and 8th grade program, or middle school.

(5) "Zone 1 School Districts" means all school districts in Carter, Dawson, Fallon, Richland, Roosevelt, Sheridan, and Wibaux counties.

(6) "Zone 2 School Districts" means all school districts in Custer, Daniels, Garfield, McCone, Powder River, Prairie, Rosebud, and Valley counties.

(7) "Zone 3 School Districts" means all school districts in Big Horn, Blaine, Carbon, Chouteau, Fergus, Glacier, Golden Valley, Hill, Liberty, Musselshell, Petroleum, Phillips, Pondera, Stillwater, Sweet Grass, Teton, Toole, Treasure, and Yellowstone counties.

AUTH: 20-9-310, MCA

IMP: 20-9-310, 20-9-517, 20-9-518, 20-9-519, MCA

NEW RULE II DISTRIBUTION OF EXCESS OIL AND NATURAL GAS PRODUCTION TAXES (1) In accordance with the quarterly distribution schedule established in 20-9-310(4)(a), MCA, the Office of Public Instruction shall allocate the excess oil and natural gas production taxes to school districts directly impacted by oil and natural gas production in the following manner:

- (a) 50% to school districts in Zone 1;
- (b) 37.5% to school districts in Zone 2; and
- (c) 12.5% to school districts in Zone 3.

(2) The Office of Public Instruction will distribute the revenues allocated to operating school districts in Zone 1 as follows:

- (a) 5% for efforts to recruit and retain qualified educators and staff;
- (b) 60% for the daily operations of school districts that have not yet reached the limit on the amount of oil and natural gas production taxes that a district may retain under 20-9-310, MCA; and
- (c) 35% for infrastructure projects in school districts that have applied for and been granted funds under this program.

(3) The funding in (2)(a) will be distributed quarterly to individual school districts based on the number of quality educators in the district compared to the total number of quality educators in the school districts in Zone 1.

(a) The district may expend funds received under (2)(a) for recruitment efforts, moving expenses, hiring bonuses, travel, student loan repayment, housing, or other initiatives to recruit and retain qualified staff.

(b) All school districts in Zone 1 will receive a distribution under (2)(a) regardless of whether the district has reached the maximum amount of oil and natural gas production taxes that it may retain under 20-9-310, MCA.

(c) The number of quality educators for a district will be the same number that is used for the distribution of the quality educator payment for the current school year.

(4) The funding for daily operations in (2)(b) will be distributed quarterly to individual school districts based on the number of quality educators in the district compared to the number of quality educators in the school districts in Zone 1.

(a) A district is eligible for funding for daily operations under (2)(b) until the district reaches the maximum amount of oil and natural gas production taxes that it may retain under 20-9-310, MCA.

(b) Once a district receives the maximum amount of oil and natural gas production taxes it may retain under 20-9-310, MCA, additional allocations during the school year will be distributed among the remaining districts that have not reached their maximum amount.

(c) The number of quality educators for a district will be the same number that is used for the distribution of the quality educator payment for the current school year.

(5) The funding for infrastructure in (2)(c) will be distributed through an annual grant process.

(a) All school districts in Zone 1 are eligible to apply individually or in conjunction with other school districts in Zone 1.

(b) Priority will be given to school districts with urgent and serious public health and safety issues, deferred maintenance, and proposals to enhance educational opportunities. The applicant will describe:

(i) the challenges facing the district in terms of student demographics, school environment, student achievement, human resources and instruction, facilities and resources and/or economic resources as a result of oil and natural gas production; and

(ii) how the proposal addresses the challenges faced by the district.

(c) A school district must deposit the infrastructure grant monies into the miscellaneous program fund.

(d) Grant funds awarded to a school district under this section do not count against the maximum amount of oil and natural gas production taxes that it may retain under 20-9-310, MCA.

(6) A nine-member committee composed of one representative from each of the seven counties in Zone 1, a representative from the Office of Public Instruction, and a representative from the Office of Budget and Program Planning (OBPP) will determine which projects are funded.

(a) Committee members will be appointed by April 1 of each year.

(b) The president of the northeast region of the Montana Association of School Superintendents will appoint the committee members from Richland, Roosevelt, Sheridan, and Wibaux counties and report the names of committee members to the Office of Public Instruction.

(c) The president of the southeast region of the Montana Association of School Superintendents will appoint the committee members from Carter, Dawson, and Fallon counties and report the names of committee members to the Office of Public Instruction.

(d) The Superintendent of Public Instruction will appoint the committee member from the Office of Public Instruction.

(e) The director of the OBPP will appoint the representative from OBPP.

(f) The committee will elect a chairperson at its first meeting.

(g) The committee will develop by-laws and a process and timeline for evaluating grant applications.

(7) Grant applications will be submitted to the Office of Public Instruction on an annual basis.

(a) The OPI will make the application format available no later than January 15. The application window will be at least 90 days.

(b) The Office of Public Instruction will distribute the submitted applications to committee members and convene the first meeting of the committee. The chairperson of the committee will convene subsequent meetings.

(c) The committee will award the grants by June 1. The OPI will distribute

the funding for the current school year to the grantees by June 30.

(8) The Office of Public Instruction will distribute quarterly the revenues allocated to school districts in Zone 2 and Zone 3 in the following manner:

(a) There is a school unit payment to each school district based upon the calculated number of school units within the school district.

(b) Each operating school district must receive a payment for at least one school unit.

(c) A district with current year ANB greater than the applicable number described in [New Rule I(4)] must receive an additional unit or units, which is calculated by dividing the current year ANB by the appropriate number of ANB in [New Rule I(4)] and rounding that number up to the nearest tenth.

(d) The Office of Public Instruction will determine the amount of excess oil and natural gas production taxes allocated to each operating district in Zones 2 and 3 as follows:

(i) determine the school unit payment by dividing the amount of revenue available for distribution in the zone by the number of school units for the operating school districts in the zone; and

(ii) multiply the number of school units for an operating district by the school unit payment to determine the amount to be distributed to the district.

(9) Except as provided in (5)(d), a school district must deposit any excess oil and natural gas production taxes received by the district in a budgeted fund of the district and record the revenue as oil and natural gas production taxes. The monies may be used in accordance with the purpose of the fund into which the monies are deposited.

AUTH: 20-9-310, MCA

IMP: 20-9-310, 20-9-517, 20-9-518, 20-9-519, MCA

4. These rules are proposed to be effective on July 1, 2016 and terminate on June 30, 2019.

5. Statement of reasonable necessity. The Superintendent of Public Instruction has determined that these rules are necessary to implement the provisions of Senate Bill 260, which directed the Office of Public Instruction to establish two independent negotiated rulemaking committees to develop a process, mechanism, and criteria for the distribution of monies in the state school oil and natural gas distribution account effective July 1, 2016.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail [bemarlow@mt.gov](mailto:bemarlow@mt.gov), and must be received no later than 5:00 p.m., May 6, 2016.

7. Ann Gilkey, Chief Legal Counsel for the Superintendent of Public Instruction, has been designated to preside over and conduct this hearing.

8. The Office of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the agency.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply. Senator Eric Moore, primary sponsor of SB 260 (2015 Legislative Session), has been aware of the negotiated rule making process by OPI staff and will receive a copy of this notice after publication.

11. With regard to the requirements of 2-4-111, MCA, the agency has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Ann Gilkey  
Ann Gilkey  
Rule Reviewer

/s/ Denise Juneau  
Denise Juneau  
Superintendent of Public Instruction

Certified to the Secretary of State March 28, 2016.