MONTANA LEGISLATURE
OFFICE OF RESEARCH & POLICY ANALYSIS

INFRASTRUCTURE USE FEE TAX CREDIT

REVENUE INTERIM COMMITTEE
MEGAN MOORE - SEPTEMBER 2023

EXPLANATION OF CREDIT

The infrastructure use fee tax credit is available to a business that pays infrastructure use fees for infrastructure built using a loan program that allows for the creation or expansion of a business in Montana.

LOAN AND TAX CREDIT PROCESS

Loan

- Board of Investment makes loan to local or tribal government for infrastructure
- Loan must result in full-time employment of 15+ people or raise salaries and business incomes of existing employees and employers
- Money comes from Coal Tax Trust Fund

Use Fees

- Local or tribal government may charge fees for use of the infrastructure built with the loan

Tax Credit

- Business may claim credit against individual income or corporate income tax for use fees paid
- Credit may be carried back 3 years and forward 7 years
- Result is general fund subsidy for expansion of local infrastructure

ADDITIONAL DETAILS AND REQUIREMENTS

INFRASTRUCTURE INCLUDES WATER, SEWER, ROADS, RAIL, UTILITIES, AND BUILDINGS

As provided in 17-6-316, MCA, the loans for which an infrastructure use fee tax credit may be claimed "must be used to build infrastructure, as provided for in 7-15-4288(4), such as water systems, sewer systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana."

Administrative Rule (ARM) 8.973.1301 includes a definition of "infrastructure loan" with a longer list of infrastructure projects that was identical to 7-15-4288(4) before a 2021 amendment:

> (6) "Infrastructure loan" means a loan for infrastructure projects which may include the acquisition, construction and improvement of infrastructure or industrial infrastructure, which includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas

> lines, electrical lines, telecommunication lines, rail lines, rail spurs, bridges, publicly owned buildings and any other public improvements authorized under 7-15-4288(4) , MCA.

Senate Bill 388, enacted in 2021, revised tax increment financing laws by removing the list of infrastructure projects in 7-15-4288, MCA,[1] and replacing it with a broader definition of "infrastructure" in 7-15-4283, MCA. The reference to 7-15-4288, MCA, included in 17-6-316, MCA, and ARM 8.973.1031 should be revisited because of the 2021 amendment.

> **Decision Point:** The committee should consider whether to amend 17-6-316, MCA, to remove the reference to 7-15-4288, MCA, and whether to provide more detail about eligible infrastructure projects.

LOAN REQUIREMENTS ADDRESS ECONOMY, JOB CREATION, AND INCOME

There are two requirements established in 17-6-309, MCA, for a loan for which an infrastructure use fee tax credit may be claimed. The loan must:

- enhance economic development and create jobs in the basic sector of the economy; and
- result in the creation or expansion of a business estimated to employ at least 15 people in Montana on a permanent, full-time basis or raise salaries, wages, and business incomes of existing employees and employers.

If the loan does not meet the above requirements, 17-6-316(2), MCA, requires any credits received for payment of use fees to be returned to the state.

BOI DEFINES "BASIC SECTOR OF THE ECONOMY"

As required by statute, the Board of Investments (BOI) defines the term "basic sector of the economy" in ARM 8.973.1301 as follows:

> (a) business activity conducted in the state that produces goods and services for which 50% or more of the gross revenues are derived from out-of-state sources; or
>
> (b) business activity conducted in-state that produces goods and services, 50% or more of which will be purchased by in-state residents in lieu of like or similar goods and services which would otherwise be purchased from out-of-state sources.

LOANS REQUIRED TO CREATE JOBS OR INCREASE WAGES AND BUSINESS INCOME

Statute does not contain additional detail about how to measure whether a new or expanded business is estimated to employ at least 15 people. When considering the *size of the loan*, 17-6-311, MCA, directs BOI to consider the number of jobs to be created within a 4-year period. There is also no detail on how to determine whether an existing business raises salaries, wages, or business incomes.

[1] The prior version of 7-15-4288, MCA, is available at: https://leg.mt.gov/bills/2019/mca/title_0070/chapter_0150/part_0420/section_0880/0070-0150-0420-0880.html

BOI reports using Quarterly Wage Reports to determine the number of jobs created but has not made any infrastructure loans to local governments based on increased wages or business incomes.[2]

Decision Point: The committee may consider whether to provide additional clarity about the requirement to create jobs or to increase salary and business income.

LOANS LIMITED TO $80 MILLION

Section 17-6-311, MCA, provides an $80 million limit on total infrastructure loans that may be eligible for the tax credit for infrastructure use fees. Currently, $70.1 million of the $80 million is available.

There are two practical effects of the limit on infrastructure loans:

- **Setting the amount of coal severance tax trust fund revenue invested in the infrastructure loan program.** The coal severance tax trust fund is invested by BOI. The principal remains in the trust fund. Interest earned on the funds is distributed to various income funds for appropriation. Using a portion of the trust fund for infrastructure loans may result in higher or lower returns than if the money was otherwise invested by BOI. The current rate of return on infrastructure loans is 4.07% compared with the Trust Funds Investment Pool yield of 3.77%.[3]
- **Establishing a maximum general fund contribution.** The loan costs may be recouped through an infrastructure use fee that qualifies for a tax credit. Tax credits reduce general fund revenue.

LOAN SIZE MAXIMUM IS $16,666 PER JOB CREATED

Section 17-6-311, MCA, also sets a maximum loan amount of $16,666 per job estimated to be created. There is no guidance on the loan amount for businesses that raise salaries and increase business income.

The Board of Investments is directed to consider the following factors when determining the size of the loan:

- the estimated number of jobs to be created within a 4-year period and the impact of the jobs on the state and the community;
- taxes expected to be paid by the business and employees;
- the ability of the community to provide infrastructure; and
- the amount of increased salaries, wages, and business incomes.

Decision Point: The committee may wish to provide guidance on the loan amount for businesses that raise salaries and increase business income.

[2] Email correspondence with Dan Villa, Executive Director, Board of Investments, Aug. 14, 2023.
[3] Infrastructure loan yield is as of June 30, 2023. Email correspondence with Dan Villa, Executive Director, Board of Investments, Aug. 14, 2023.

INTEREST RATE REDUCTION FOR JOBS CREATED

Loans made for infrastructure eligible for the infrastructure use fee credit are also eligible for an interest rate reduction if the rate reduction passes through to the business creating jobs. Section 17-6-318, MCA, provides for a 0.05% interest rate reduction for each job created to employ a Montana resident. The maximum interest rate reduction is 2.5%, which is equivalent to the creation of 5 jobs.

The interest rate reduction may be adjusted proportionately for each increment of 25% above or below the state's average weekly wage. The upward increase is capped at two times the state's average weekly wage.

STATUTE SILENT ON WHETHER INFRASTRUCTURE FEE MAY BE BUSINESS EXPENSE

Section 17-6-316(3), MCA, provides for the tax credit for the infrastructure use fee but does not address whether a taxpayer may deduct the infrastructure use fee as a business expense and claim the tax credit.

The Department of Revenue recommends that "all sections providing for a tax credit related to a business expenditure explicitly state if the deduction of underlying expenses is allowed as it is customarily done for federal business credits."[4]

Decision Point: The committee should discuss DOR's recommendation to insert language clarifying whether a business deduction and credit may be claimed.

PURPOSE

The 1995 Legislature enacted the infrastructure loan program and the infrastructure use fee tax credit. The law was a result of the coordination of two bills enacted during the 1995 legislative session: Senate Bill 100 and House Bill 602.

When enacted, the purpose of the credit was to use state funds to support local infrastructure for new or expanded businesses that create jobs in Montana.

SENATE BILL 100 AIMED TO ATTRACT MICRON TO BUTTE

Near the start of the 1995 legislative session, Boise, Idaho-based computer storage company Micron listed Butte among 13 cities being considered for a new Micron facility. Butte needed a new waste treatment plant to accommodate the Micron facility but could not finance the $16 million project.[5]

The infrastructure loan program and infrastructure use fee tax credit in Senate Bill 100 (SB 100) would allow Butte to finance the water treatment plant and increase its standing in the competition for the Micron facility.

[4] David Merrien, Memorandum: Infrastructure User Fee Credit (IUFC), Aug. 15, 2023.
[5] Sen. Tom Beck, bill sponsor, testimony on Senate Bill 100, Senate Business and Industry Committee, Jan. 13. 1995.

SB 100 would have allowed a loan of up to $20 million if the loan would "enhance economic development" and result in the creation of a business estimated to employ at least 2,000 people in Montana.

Testimony on SB 100 stressed the importance of the bill moving quickly through the legislative process.[6] The governor signed SB 100 on January 20, 1995, and the bill was effective immediately.

HOUSE BILL 602 MADE PROGRAM AVAILABLE TO SMALLER BUSINESSES

After the rush to enact SB 100, the Legislature considered the infrastructure loan program and tax credit more thoroughly with the enactment of House Bill 602 (HB 602). The table below summarizes the main differences.

The testimony on HB 602 outlined the reasons for the bill and why HB 602 revised provisions contained in SB 100. Local governments were unable to afford infrastructure necessary for expanding businesses under existing programs and rate structures. The bill reduced the required jobs created from 2,000 to 50 to allow flexibility and to benefit smaller businesses.[7]

DIFFERENCES BETWEEN HB 602 AND SB 100

Provisions	HB 602	SB 100
Eligibility	Business creation or expansion	Business creation
Required estimated employment	50	2,000
Loan amounts	• Total loans capped at $20 million • Minimum loan of $500,000 • Maximum loan of $10,000 per job created	• Individual loan capped at $20 million
Determination of loan amount	Statute contains guidance	No guidance

[6] Rep. Dan Harrington, testimony on Senate Bill 100, Senate Business and Industry Committee, Jan. 13, 1995.
[7] Rep. Sam Kitzenberg, bill sponsor, and Rick Jones, Department of Commerce, testimony on House Bill 602, House Business and Labor Committee, March 21, 1995.

LEGISLATIVE HISTORY

1997

- Added 4-year period for consdering jobs created when determing loan size
- Allowed job credit interest rate reduction
- Removed $250,000 loan increment

1999

- Reduced jobs requirement to 15
- Loan allowed for businesses that raise wages and business incomes
- Increased total loans to $50M
- Reduced minimum loan to $250,000
- Increased loan per job to $16,666

2007

- Increased total loans to $80M

2019

- Tribal government eligible for infrastructure loan program

1997: ALLOWED 4-YEAR PERIOD FOR JOB CREATION WHEN SIZING LOAN

The 1997 changes to the infrastructure loan program resulted from BOI's experience making the first loan under the program. Silver Bow County received a loan for infrastructure expansion to accommodate an Advanced Silicone Materials plant.

The law directed BOI to size the loan based on jobs created within a 2-year period. Two years was not long enough because both the infrastructure and the plant had to be built before creation of the permanent jobs. The legislation increased the job creation timeframe to 4 years.[8]

The legislation also allowed an infrastructure loan to qualify for a job creation interest rate reduction that already existed for small business loans. The Legislature set the job creation timeframe for the rate reduction at 4 years.

The final change enacted in 1997 was removal of a requirement for loans in $250,000 increments. The increment seemed arbitrary and did not align with the guideline of sizing a loan to $10,000 per job created.[9]

1999: DECREASE IN JOBS REQUIREMENT, INCREASE IN TOTAL LOANS

The 1999 Legislature's Joint Select Committee on Jobs and Income passed changes to the infrastructure loan program including a reduction in job creation requirements, an increase in total loans, and revisions to loan sizes and the determination of loan sizes.

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[8] Carroll South, Board of Investments, testimony on House Bill 350, Senate Committee on Business and Industry, March 5, 1997.
[9] Ibid.

Those testifying on the bill referenced focus groups as the source of the changes. There was a concern that requiring the creation of 50 jobs and a high minimum loan amount prevented rural communities from using the loan program.[10] BOI also planned to increase marketing for the program and mentioned that only one loan was made in the program's 4-year history.[11]

After amendment, the purpose expanded to include state support for infrastructure that supports businesses that increase wages or business incomes.

The legislation also expanded eligibility to businesses that "raise salaries, wages, and business incomes of existing employees and employers." There was no testimony about this change because it came in the form of an amendment. The minutes for executive action do not include a summary of the committee discussion.

2007: TOTAL LOANS INCREASED TO $80 MILLION

The 2007 Legislature increased the limit on the total loans for the infrastructure program from $50 million to $80 million. Without an increase, the Board of Investments expected to meet the $50 million limit before the 2009 legislative session.[12]

2019: TRIBAL GOVERNMENTS ELIGIBLE FOR LOANS

The 2019 Legislature enacted a bill to expand the infrastructure loan program to tribal governments.

TAXPAYER USE OF CREDIT

INFRASTRUCTURE LOANS CONCENTRATED IN MORE POPULOUS COUNTIES

Since the creation of the infrastructure loan program in 1995, BOI has made 19 loans totaling $51.1 million. The borrowers include cities, counties, a consolidated city-county, economic development authorities, airport authorities, and a port authority. Eleven entities in six counties received loans and eight loans have outstanding balances. See the Appendix for a complete list of loans by entity.

County	Outstanding Loans	Total Loans
Cascade	$3,790,950	$19,858,517
Missoula	$4,689,197	$15,787,420
Yellowstone	$439,866	$7,487,211
Gallatin	$0	$4,000,000
Butte-Silver Bow	$0	$2,839,980
Ravalli	$932,015	$1,136,163

[10] Andy Poole, Department of Commerce, testimony on House Bill 237, Joint Select Committee on Jobs and Income, Jan. 11, 1999.
[11] Carroll South, Board of Investments, testimony on House Bill 237, Joint Select Committee on Jobs and Income, Jan. 11, 1999.
[12] Sen. David Wanzenried, sponsor, testimony on Senate Bill 60, Senate Finance and Claims Committee, Jan. 9, 2007.

The location of borrowers in more populous counties may indicate a failure to meet the goal of the 1999 amendments to provide access to the loan program to rural communities. Information about the type and location of infrastructure projects funded could aid in understanding which Montana communities benefit.

Possible follow-up: The committee may wish to request information on the location and type of infrastructure funded with the loans to better determine which communities benefit from the program.

AFTER SLOW START, MORE CREDITS CLAIMED IN RECENT YEARS

The Board of Investments' stated intent to expand marketing of the infrastructure loan program in 1999 resulted in an increase in loans. From 2003 to 2020, total individual and corporate income tax credits claimed exceeded $300,000 in all years except 2011.[13]

The slow increase in credits likely results from the time necessary to build the infrastructure and the new business and show job creation. BOI testified in 1999 that this can take 4 years. A business must owe income taxes to claim the credit, which may not initially be the case for a new business.

The total of credits claimed is likely to remain low. The credit is only available to a business that pays infrastructure fees for infrastructure expanded through the BOI loan program and creates jobs or increases wages or business incomes. There are currently eight outstanding loans.

Since 2001, taxpayers filing individual income tax returns claimed credits totaling $6.5 million, while corporations claimed $10.5 million. See page 9 for credits claimed by year.

CREDIT ADMINISTRATION

The Board of Investments believes the infrastructure loan program works well and does not recommend any changes to the program.[14]

The Department of Revenue requires claimants to include a copy of a BOI letter listing the annual infrastructure use fee payments and "verifies periodically that the credit amount reported is correct."[15]

DOR does not have a role in determining whether a taxpayer meets the job creation requirements of the loan but did raise concerns about the clarity of the statutes outlining the requirements.

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[13] Data for corporate income tax credits claimed in 2021 is not available yet.
[14] Email correspondence with Dan Villa, Executive Director, Board of Investments, July 6, 2023.
[15] David Merrien, Memorandum: Infrastructure User Fee Credit (IUFC), Aug. 15, 2023.

INFRASTRUCTURE USE FEE TAX CREDIT USAGE, 2001-2021

Tax Year	Individual Credits Claimed	Corporate Credits Claimed	Total Credits Claimed
2001	$0	$100	$100
2002	$0	$36,295	$36,295
2003	*	$533,813	$533,813
2004	*	$814,362	$814,362
2005	$851,766	$685,134	$1,536,900
2006	$778,095	$50	$778,145
2007	$24,311	$622,928	$647,239
2008	$30,372	$1,345,829	$1,376,201
2009	$26,511	$520,271	$546,782
2010	$45,258	$501,904	$547,162
2011	$29,161	$45,913	$75,074
2012	$21,120	$305,304	$326,424
2013	$21,503	$472,732	$494,235
2014	$28,154	$741,261	$769,415
2015	$1,621,555	$1,676,702	$3,298,257
2016	$264,530	$706,524	$971,054
2017	$1,457,532	$276,976	$1,734,508
2018	$852,454	$579,462	$1,431,916
2019	$356,671	$264,738	$621,409
2020	$10,228	$398,786	$409,014
2021	$80,690	**	$80,690

*Department of Revenue data only has combined "other credits" in these years.
**Corporate income tax data for 2021 is not available yet.

NO SIMILAR PROGRAMS IN OTHER STATES

Finding information on specialized tax credits in other states is difficult. Other states offer tax incentives for job creation or have infrastructure loan programs, but it does not appear that other states combine the two like Montana.

APPENDIX A: INFRASTRUCTURE LOAN PROGRAM RECIPIENTS[16]

Borrower	Loan Year	Interest Rate	Job Credit Rate Reduction	Original Loan Amount	Loan Balance[17]
Butte-Silver Bow	Pre-1999	7.85%		$499,980	$0
Big Sky Economic Development Authority	2001	6.07%		$2,170,672	$0
Gallatin County	2002	5.05%	✓	$4,000,000	$0
Butte-Silver Bow	2003	4.00%	✓	$2,340,000	$0
Big Sky Economic Development Authority	2004	4.75%	✓	$458,400	$0
Great Falls Port Authority	2005	4.43%	✓	$4,999,800	$856,331
Missoula County	2006	4.80%	✓	$10,640,000	$4,689,197
Great Falls International Airport Authority	2007	4.89%	✓	$1,070,612	$293,172
Great Falls International Airport Authority	2008	5.95%	✓	$1,288,605	$502,642
Big Sky Economic Development Authority	2009	6.67%	✓	$691,639	$439,866
Big Sky Economic Development Authority	2009	4.25%	✓	$4,166,500	$0
City of Great Falls	2014	1.98%	✓	$4,999,800	$2,138,805
Cascade County	2015	5.70%		$7,499,700	$0
City of Missoula	2017	3.20%	✓	$1,999,920	$0
Missoula County Airport Authority	2017	5.19%		$1,147,500	$0
Ravalli County Economic Development Authority	2018	4.00%	✓	$269,531	$183,143
Ravalli County Economic Development Authority	2020	2.02%	✓	$866,632	$748,873
Missoula County Airport Authority	2021	3.10%		$2,000,000	$0

[16] Data provided via email by Dan Villa, Executive Director, Board of Investments, July 6, 2023, and Aug. 18, 2023.
[17] As of June 30, 2023.

APPENDIX B: INDIVIDUAL CREDITS REPORTED BY FILING STATUS

The table shows total individual credits by filing status. The number and dollar amounts represent reported credits, not the dollar amount of credits claimed. Taxpayers may have carried forward some dollar amounts.

Tax Year	Resident		Non-resident		Part-year resident		Total	
	#	$	#	$	#	$	#	$
1995	*	$461	*	$2,287	Part-year resident data included with non-resident data		*	$2,748
1996	*	$28	*	$665			*	$693
1997	*	$60	*	$211			*	$271
1998	0	$0	0	$0	0	$0	0	$0
1999	*	$27	0	$0	0	$0	*	$27
2000	0	$0	0	$0	0	$0	0	$0
2001	0	$0	0	$0	0	$0	0	$0
2002	0	$0	0	$0	0	$0	0	$0
2003	No data available^							
2004								
2005	11	$851,766	0	$0	0	$0	11	$851,766
2006	*	$778,095	0	$0	0	$0	*	$778,095
2007	14	$24,311	0	$0	0	$0	14	$24,311
2008	16	$30,372	*	$1,034	0	$0	>16	$31,406
2009	12	$27,699	0	$0	0	$0	12	$27,699
2010	13	$45,258	*	$3,820	0	$0	>13	$49,078
2011	12	$24,414	*	$2,487	*	$4,711	>12	$31,612
2012	*	$20,990	*	$11,023	0	$0	*	$32,013
2013	*	$21,203	*	$17,211	0	$0	*	$38,414
2014	10	$27,269	*	$9,327	0	$0	>10	$36,596
2015	13	$2,832,145	*	$10,755	0	$0	>13	$2,842,900
2016	14	$646,145	*	$11,587	0	$0	>14	$657,732
2017	21	$3,341,669	*	$11,011	0	$0	>21	$3,352,680
2018	20	$6,427,077	*	$57,084	0	$0	>20	$6,484,161
2019	*	$5,019,787	*	$23,340	0	$0	*	$5,043,127
2020	*	$4,665,962	*	$21,494	0	$0	*	$4,687,456
2021	*	$4,682,999	*	$62,650	0	$0	*	$4,745,649

*Fewer than 10 credits claimed, not disclosed to preserve confidentiality.

^Department of Revenue data only has combined "other credits" in these years.