



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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**Director**  
AMY CARLSON

DATE: July 1, 2021

TO: Legislative Finance Committee

FROM: Amy Carlson, Director

RE: ARPA Treasury Rules and potential comment

Effective May 17, 2021, the U.S. Department of the Treasury has published the interim final rule regarding further clarification and details for the American Rescue Plan Act of 2021 (ARPA). These rules specifically lay out the rationale for final publishing without either a public comment period or a delay for public notice. As such, the rules are considered "final", but the Treasury has still provided an opportunity for public comment, even going so far as to posing specific questions to the public within the published rule. However, as the rule is considered final, the impact or effect of such comment is not clear.

The scope of the interim final rule is limited to the federal Coronavirus State and Local Fiscal Recovery Funds, known in HB 632, and for the remainder of this document as section 602 funds. Further guidance on other funds is forthcoming.

Public comment must be received by the Treasury on or before July 16, 2021. The LFC has scheduled a remote meeting for July 1, 2021 to discuss whether there is a need or desire by the LFC to provide comment on these rules.

Specifically, the LFC may wish to consider any areas where there may be a disconnect between what the 2021 Legislature passed in HB 632 and rules issued for 602 funds. The Legislative Fiscal Division has provided a basic overview of the relevant questions and rules below. This is not an exhaustive summary of the interim final rule however, and interested persons should reference that rule for themselves, which can be found here:

<https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf>

In preparation for the July 1 meeting, materials for your review are focused on:

- Revenue loss projections and funding use (see separate [memo](#) for detail)
- Water and Sewer Infrastructure as defined in the interim final rule
- Broadband infrastructure definitions and conflict between the rules and HB 632/SB 297
- Guidance on economic uses of the 602 funds
- Upcoming rules on section 604 Capital Projects funds

## **Revenue Replacement**

The ARPA provided for calculating lost revenue due to COVID-19 and using that funding for a wider array of government services than otherwise allowed under ARPA. As noted in a separate memo to the LFC, the LFD has calculated that Montana has a potential range of revenue replacement from \$181 million to \$264 million, depending upon whether or not university funds are included.

The key point here is that these funds that are designated as “revenue replacement” can be used for any purpose within the framework of HB 632. The federal restrictions stipulate only that they be used to provide government services, specifically excluding putting the funds into a rainy day fund or using them to pay off debt.

### **Water and Sewer Infrastructure:**

The interim final rule for the 602 funds targeted at water and sewer infrastructure is generally not in conflict with HB 632, but the eligibility criteria may serve to limit certain projects that may be regional or local priorities. The interim final rule defines eligible projects as those that are normally eligible for financial assistance through the EPA’s Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF). While a wide range of water/sewer/stormwater projects are eligible, certain projects imagined by the legislature or additional flexibility requested by local governments, such as water projects involving dams or replacement of lead-containing water pipes within buildings, are normally not eligible under CWSRF or DWSRF.

### **Broadband Infrastructure:**

The interim final rule for 602 funds targeted at broadband infrastructure includes definitions of unserved and underserved areas that is in conflict with the definitions included in SB 297 and HB 632. Additionally, the rule sets specific project requirements for upload/download speed which may not be practical in rural areas of the state, thereby precluding some projects from consideration.

### **Economic Transformation and Stabilization:**

While the rule provides various examples of how 602 funds may be used to address the economic impacts of COVID-19, they also clearly state that the list is not exhaustive and that these funds can be used to “address an economic harm resulting from or exacerbated by” COVID-19. Among the types of activities explicitly allowed are assistance to small businesses and nonprofits including loans, grants, in-kind assistance, and technical assistance, which seems to closely reflect the intent of HB 632. For industries outside of tourism, travel, and hospitality, the rule does suggest that a state should justify these uses with data showing the COVID-19 impact on these industries.

The amount of revenue replacement funding referenced earlier in the memo exceeds the total amount allocated to this area by HB 632. As a result, even where there are concerns that this economic assistance funding might not fit the guidance established in the interim final rule, the use of revenue replacement funding would provide full flexibility within the requirements established in HB 632.

### **Capital Projects Funds:**

A final rule for 604 funds targeted at capital projects has not been issued, and the Treasury indicates the guidance will be issued in the summer of 2021. The Treasury posted a brief Statement on Purpose and Process on May 10, 2021, indicating a possible focus on infrastructure related to improving internet connectivity and access. HB 632 appropriated the 604 funds for projects for state-owned buildings and facilities and associated infrastructure as well as within the

Montana University and Community College systems. The LFD and OBPP will evaluate any conflicts with HB 632 upon release of any rules for these funds.

**LFC Options:**

The LFC may wish to provide comment to the U.S. Dept. of the Treasury regarding the interim final rule. Possible responses include, but are not limited to:

1. The LFC could vote to sign on to the governor's comment in response to the interim final rule.
2. The LFC could develop its own comment focused very specifically on areas of concern where there appears to be a disconnect between HB 632 and the interim final rules.
  - a. A draft comment response has been provided as a starting point for consideration, which should serve to guide discussion in this regard
3. The LFC could choose not to comment on the interim final rule in any way.