



Education Interim Committee
65th Montana Legislature

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TO: Education Interim Committee
FROM: Pad McCracken, Committee Staff
RE: Explanation of Committee K-12 Funding Clean-up Bill Drafts
DATE: June 1, 2018

At the March EDIC meeting, staff presented several technical issues in existing K-12 funding statutes for the committee to consider addressing through committee clean-up bills. The committee directed staff to prepare bills addressing four of these issues and bring more information on a fifth. This memo serves as brief explanation of the four attached bill drafts and provides information on the fifth issue related to the existing statutory definition of “pupil” at 20-1-101, MCA.

I’m also including 20-9-323, MCA, at the end of this memo as an FYI. The provisions of this section begin on July 1, 2020, and the education interim committee has a role, but perhaps not a clear one.

1. **LC 307X**—this bill draft corrects a drafting error in the calculation of school major maintenance aid in support of the new permissive local levy for school major maintenance created in [SB 307](#) (Llew Jones, 2017). Fixing this error involves making several changes to [20-9-525, MCA](#) (see page 4 of the draft). Because there has been no appropriation for school major maintenance aid, this has not been a problem, but making this correction early in the 2019 Session (and appropriating sufficient funds for the aid) will allow OPI to provide accurate information to local trustees as they plan for 2020 budgets. This is why the draft has an immediate effective date. Additionally, staff recommends removing the termination of changes in one section of SB 261 (Llew Jones, 2017) so that the temporary section of 20-9-635, MCA, endures and leaves an accurate statutory record of NRD facility payments. There will be no NRD payment in 2019 and statute should reflect that. See highlighted language below and Section 2 of LC307X (Section 2 on page 6 of the draft).

20-9-635. (Temporary) Natural resource development K-12 school facilities payment.
(1) The natural resource development K-12 school facilities payment replaces the former natural resource development K-12 funding payment as a means to provide local property tax relief by supporting school district facility needs. The legislature intends for the new

payment to grow in a manner similar to the previous payment as described in subsection (2) through fiscal year 2022 until other revenue to support school facilities has increased.

(2) Beginning in fiscal year 2020, the superintendent of public instruction shall annually deposit no later than March 31 in the school major maintenance aid account provided for in 20-9-525 the natural resource development K-12 school facilities payment, which is calculated as the greater of:

(a) \$6.4 million in fiscal year 2020, \$7.6 million in fiscal year 2021, and \$10 million in fiscal year 2022, increased by an inflationary adjustment calculated as provided in 20-9-326 in each succeeding fiscal year; or

(b) 5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment.

(3) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a natural resource development K-12 school facilities payment for each year of the ensuing biennium calculated as described in subsection (2). (Terminates June 30, 2019—secs. 27, 35, Ch. 429, L. 2017.)

20-9-635. (Effective July 1, 2019) Natural resource development K-12 school facilities payment. (1) The natural resource development K-12 school facilities payment replaces the former natural resource development K-12 funding payment as a means to provide local property tax relief by supporting school district facility needs. The legislature intends for the new payment to grow in a manner similar to the previous payment as described in subsection (2) through fiscal year 2022 until other revenue to support school facilities has increased.

(2) Beginning in fiscal year 2019, the superintendent of public instruction shall annually deposit no later than March 31 in the school major maintenance aid account provided for in 20-9-525 the natural resource development K-12 school facilities payment, which is calculated as the greater of:

(a) \$5.8 million in fiscal year 2019, \$6.4 million in fiscal year 2020, \$7.6 million in fiscal year 2021, and \$10 million in fiscal year 2022, increased by an inflationary adjustment calculated as provided in 20-9-326 in each succeeding fiscal year; or

(b) 5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment.

(3) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a natural resource development K-12 school facilities payment for each year of the ensuing biennium calculated as described in subsection (2).

2. **LC O&NG**—there is a temporary version of [15-36-332, MCA](#), that makes reference to [20-9-310, MCA](#), which prior to 2013 had been scheduled to terminate. Because 20-9-310, MCA, will no longer terminate, the temporary section of 15-36-332, MCA, should be made permanent. Staff prepared a [brief](#) on recent changes to the distribution of oil and natural gas production taxes and school funding that provides more information on this issue. The brief also mentions the existence of several special revenue accounts related to changes to oil and natural gas production tax distributions that are no longer in use and could be

repealed. This draft repeals the session laws containing the original and extended termination dates as well as the statutes creating the three special revenue accounts.

3. **LC JOIN**—Special Education Joint Boards. [20-7-457, MCA](#), and [20-9-321, MCA](#), both include references to a “joint board for special education services formed under 20-3-361 prior to July 1, 1992.” No such joint boards exist and the draft strikes these references and moves a provision related to joint boards to a more appropriate section (current subsection (3) of 20-7-457 on page 3 is moved to new subsection (7) of 20-3-361 also on page 3).
4. **LC 390X**—[HB 390](#) (Don Jones, 2017) and the return of local tax dollars following an overestimated ANB increase. Districts that estimate an increase in ANB in the upcoming school year that does not materialize are required to refund state funding that results from the overestimate, and now under HB 390, the local taxes as well. HB 390 requires that the “overpaid” local taxes be returned to both the BASE and overBASE budget areas in the ensuing year. Applying this money to the BASE reduces state GTB aid for eligible districts and results in not fully refunding local property taxes. Addressing this issue will require changes to 20-9-141 and 20-9-314, MCA. See attached graphic.
5. **Pupil Definition.** Both [20-1-101\(16\), MCA](#), and [20-5-101, MCA](#), indicate that to be considered a pupil and require admission by trustees to a public school, a child must be 6 years old by Sept 10 of a given school year or enrolled by special permission of trustees under 20-5-101(3). Does this mean that all five-year-old kindergarteners should be enrolled only upon special permission of the trustees? This confuses [20-7-117, MCA](#), which requires a district to make at least half-day kindergarten available to all five-year-olds in the district.

A bill draft addressing this issue would simply strike the three occurrences of “6” highlighted below and replace them with “5”. Two other sections [20-7-411, MCA](#), and [20-7-443, MCA](#), regarding age limits for students with disabilities may need to be similarly amended.

Clarifying that five-year-olds enrolled in public schools are “pupils” will not impact ANB; kindergarteners are already included in ANB calculations.

From 20-1-101. Definitions.

(16) "Pupil" means a child who is **6 5** years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but who has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

20-5-101. Admittance of child to school. (1) The trustees shall assign and admit a child to a school in the district when the child is:

- (a) 65 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;
- (b) a resident of the district; and
- (c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 65 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.

6. **Ending fund balance limits in 20-9-323, MCA.** The provisions of this section begin in the middle of the next interim and its implementation may raise some questions that this committee could consider addressing:

- a. Subsection (3) begins with “Unless an exception is granted under subsection (5)...” but subsection (5)—and the procedure outlined in 20-9-161, MCA, for large budget amendments—simply requires school districts to report to the education interim committee. Is the committee’s role to “grant” the exception or simply accept a report that a district is in essence exempting itself?
- b. Subsection (2) describes the remedy if a district exceeds the 300% ending fund balance limit, basically a distribution of the excess to other districts in the county, but subsection (7) does not indicate any remedy for a district with a flexibility fund balance of over 150%. What should happen to the excess money in this circumstance, the same as is described in subsection (2) or is the idea simply that a district must allocate the money to another fund?
- c. Subsection (7) is also not clearly limited to the ending fund balance of the flexibility fund. Is the prohibition meant to apply at any time throughout the year? If so, this prohibition may be better placed in 20-9-543, MCA, which establishes the school flexibility fund and describes its uses and financial administration, especially if the idea is to simply require a district to allocate money that would otherwise put the flex fund over 150% to another fund.

20-9-323. Ending fund balance limits. (1) Beginning July 1, 2020, the combined ending fund balance for all budgeted funds of a school district may not exceed 300% of the maximum general fund budget. The 300% limit is not applicable to the building reserve fund, the debt service fund, or the bus depreciation reserve fund.

(2) The county superintendent shall, upon completion of a school fiscal year, redistribute any amounts in excess of the 300% limit among any other school districts in the same county whose combined ending fund balance for all budgeted funds included in subsection (1) has not exceeded the 300% limit. The county superintendent shall redistribute funds equally to the school districts qualifying for redistribution on a per-quality-educator basis, calculated by dividing

the total funds by the total number of quality educators, as defined in **20-4-502**, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. School districts receiving the funds may place the funds in any budgeted fund of the district at the discretion of the board of trustees of each district.

(3) Unless an exception is granted under subsection (5), upon completion of a school fiscal year, a school district with combined ending fund balances in excess of the 300% limit shall cooperate with the county superintendent in effectuating the redistribution of excess funds as provided in subsection (2). A school district may make the payment required under this subsection from any fund or funds of the district other than the debt service fund, the building reserve fund, and the bus depreciation reserve fund.

(4) Any funds that cannot be redistributed within a county without causing a school district in the county to exceed the 300% limit must be remitted by the county treasurer to the state for deposit in the guarantee account and distribution in the same manner as provided in **20-9-622(2)**.

(5) In accordance with **20-9-161**, a school district shall report to the education interim committee for any exception taken to the limits prescribed by subsection (1) of this section.

(6) This section does not apply to school districts that are in a nonoperating status under **20-9-505** or that are in the first year of operation after reopening under **20-6-502** or **20-6-503**.

(7) Beginning July 1, 2020, the balance of a school district's flexibility fund may not exceed 150% of the school district's maximum general fund budget.

HB 390 issue

Year 1

OverBASE budget area: tuition payments, <u>nonlevy</u> revenue, local property taxes	
Local property taxes	GTB Aid
FBR and other <u>Nonlevy</u>	
Overpayment	
Direct State Aid (DSA)	
Special Ed	
5 Comps	

Year 1 – ANB increases were overestimated, resulting in higher budget limits and overpayments from the state (**red boxes**) for all ANB-related components and GTB (if the district is eligible); these are refunded to the state at the end of year 1. This overestimation also resulted in an overlevying of property taxes (**green boxes**) in the BASE budget area and perhaps in the overBASE as well.

Year 2

OverBASE budget area: tuition payments, <u>nonlevy</u> revenue, local property taxes	
Local property taxes	GTB Aid
FBR and other <u>Nonlevy</u>	
Direct State Aid (DSA)	
Special Ed	
5 Comps	

Until HB 390 (2017; Don Jones) the overlevied local taxes in Year 1 were not necessarily returned to local taxpayers. HB 390 requires that these dollars are used to reduce BASE and overBASE levies in the subsequent school fiscal year.

Reducing overBASE levies is fairly straightforward, but when the overlevied BASE property taxes from the prior year are used to reduce property taxes in a manner similar to fund balance reappropriated (FBR; **orange box**) some of the local dollars collected in the prior year actually serve to reduce state GTB aid, so the locals are not receiving a dollar-for-dollar return of the previous overlevied amounts.

In order for the previously levied local dollars for the BASE to be fully returned to local taxpayers, the BASE levy calculations for affected districts would need to be described differently than currently in 20-9-141, MCA, so that the first year's overpayment would be returned in full to taxpayers (**purple box**) and not reduce state GTB Aid in the second year.