

1 HOUSE BILL NO. 555

2 INTRODUCED BY J. BALYEAT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO EDUCATION FUNDING;
5 PROVIDING AN INDIVIDUAL INCOME TAX CREDIT FOR QUALIFYING ELEMENTARY AND SECONDARY
6 EDUCATION EXPENSES PAID BY AN INDIVIDUAL FOR A DEPENDENT MINOR; REQUIRING A
7 DECLARATION OF INTENT TO CLAIM A TAX CREDIT; ESTABLISHING THE MONTANA EXCELLENCE IN
8 TEACHING AWARD PROGRAM; PROVIDING THAT ANB ENTITLEMENT MONEY SAVED THROUGH A
9 TUITION TAX CREDIT BE APPORTIONED AND DISTRIBUTED TO EACH DISTRICT BASED ON AVERAGE
10 NUMBER BELONGING TO PROVIDE AWARDS TO CLASSROOM TEACHERS OR SPECIALISTS SELECTED
11 BY DISTRICT PARENTS; AMENDING SECTIONS 20-9-161, 20-9-162, 20-9-163, 20-9-311, AND
12 20-9-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
13 APPLICABILITY DATE."

14

15 WHEREAS, Article X, section 1(1), of the Montana Constitution guarantees equality of educational
16 opportunity to each person of the state; and

17 WHEREAS, the Legislature finds that allowing lower-income parents the same ability that wealthy
18 parents now have in selecting the school of their choice enhances equality of educational opportunity; and

19 WHEREAS, the Legislature strongly supports the rights of parents to choose the way in which their
20 children are educated, consistent with their academic expectations and personal values; and

21 WHEREAS, the Legislature believes that competition in the educational marketplace has a
22 strengthening effect on both public and private education and serves the long-term best interests of all
23 students; and

24 WHEREAS, the Legislature supports an education policy that fosters the free movement of
25 educational consumers to the schools of their choice; and

26 WHEREAS, the Legislature finds that parental choice in education can reduce the Montana property
27 and income tax burdens and increase the amount of money available to educate each child in the public
28 schools; and

29 WHEREAS, the Legislature is aware that teacher pay in Montana constitutes only 37% of the K-12
30 education budget, while the national average devotes 44% of the K-12 education budget to teacher pay;

1 and

2 WHEREAS, the Legislature desires the legislation to be revenue neutral and to use the state savings
3 generated by a tuition tax credit to augment teacher salaries for meritorious teachers; and

4 WHEREAS, the Legislature intends, with passage of this act, to grant all parents more educational
5 choice and to grant public school parents an increased voice in their local schools.

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8

9 NEW SECTION. **Section 1. Elementary and secondary education expense tax credit.** (1) There is
10 a credit against the taxes otherwise due under this chapter for qualified elementary and secondary
11 education expenses paid by an individual for a dependent who is a minor during the tax year. In order to
12 claim the credit, the individual must have a completed intent form to claim an education tax credit on file
13 with the state pursuant to [section 2].

14 (2) (a) Education expenses that qualify for the credit under this section are amounts paid as tuition
15 and fees by an individual for a dependent who is in compliance with Title 20, chapter 5, part 1.

16 (b) Qualifying education expenses do not include amounts paid to a governmental entity as
17 property taxes, assessments, or fees.

18 (3) The amount of the credit for qualifying education expenses is as follows:

19 (a) up to \$375, as applied against the first \$375 of qualifying education expenses, for the tax year
20 beginning January 1, 2001, but only for the amount by which those expenses have increased from the
21 previous tax year;

22 (b) up to \$750 for the tax year beginning January 1, 2002, as applied against the first \$375 of
23 qualifying education expenses for attendance from January 1, 2002, to June 30, 2003, and against the
24 first \$375 of qualifying education expenses for attendance from July 1, 2002, to December 31, 2002,
25 but only for the amount by which those expenses have increased from the 2000 tax year; and

26 (c) up to \$1,000 for tax years beginning on or after January 1, 2003.

27 (4) A deduction or credit is not allowed under any other provision of this chapter with respect to
28 any amount for which a credit is allowed under this section. Any amount of the credit allowed under this
29 section that is in excess of an individual's tax liability may not be refunded to the individual.

30 (5) In the case of a married individual filing a separate return, the amount of the credit under

1 subsection (3) is limited to one-half of the applicable amount.

2

3 **NEW SECTION. Section 2. Intent to claim education tax credit -- form.** (1) The superintendent
4 of public instruction shall provide a form on which to declare the intent to claim an education tax credit.
5 The form must outline the tax credit provided by [section 1] and must contain an affidavit that the
6 individual completing the form intends to enroll a dependent minor in a nonpublic school or a public school
7 other than a public school in the district of residence during the following school year. The form must be
8 distributed to each student attending public school. Forms must also be provided to and be available from
9 each county superintendent of schools.

10 (2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually
11 complete the form provided for in subsection (1) of this section and return the form to an official of the
12 individual's district of residence by May 10. Each district shall forward the forms to the county
13 superintendent, who shall then forward the forms to the superintendent of public instruction. The number
14 of eligible dependent minors indicated on the forms who were enrolled in a public school during the year
15 in which the form was filed must be excluded from ANB calculations for the ensuing school year.

16 (3) The superintendent of public instruction shall forward a copy of each form to the department
17 of revenue for use in determining eligibility for the tax credit provided for in [section 1].

18

19 **NEW SECTION. Section 3. Montana excellence in teaching award program -- eligibility --**
20 **distribution of funds.** (1) The board of trustees of each school district may establish a Montana excellence
21 in teaching award program to allow the parents of each child attending school in the district to select
22 recipients.

23 (2) If a program is established, the trustees shall, by May 1 of each year, institute a voting
24 procedure to allow the custodial parent or parents one vote for each child attending school in the district
25 to select the teachers or specialists for the excellence in teaching award. To be eligible for the excellence
26 in teaching award, a teacher or specialist must be a classroom teacher or specialist and a full-time
27 employee in an accredited school in the district.

28 (3) For school fiscal years beginning on or after July 1, 2001, the superintendent of public
29 instruction shall:

30 (a) calculate the total statewide ANB entitlement money saved by the enrollment decrease

1 attributable to claims submitted pursuant to [section 2];

2 (b) subtract from the total calculated in subsection (3)(a) the amount not collected because of the
3 tax credit received under [section 1]; and

4 (c) distribute to each district within 2 days of the final direct state aid payment made pursuant
5 to 20-9-344 the district's percentage share of the remaining ANB entitlement based on the district's ANB
6 enrollment.

7 (4) A district that receives funds pursuant to subsection (3) shall deposit the funds into its
8 miscellaneous programs fund and may use the funds only to pay Montana excellence in teaching award
9 recipients.

10 (5) From the funds distributed to the district by the superintendent of public instruction pursuant
11 to this section, the district shall pay \$4,000 to each teacher or specialist selected to receive a Montana
12 excellence in teaching award.

13 (6) If funds allocated to the district are not adequate to provide a \$4,000 payment to each
14 recipient, the district shall distribute payments in \$4,000 increments based on the ranking of teachers or
15 specialists as determined by the parental vote, and any money remaining that is insufficient to award a
16 full \$4,000 payment must be paid to the next highest ranking recipient on the list.

17 (7) A Montana excellence in teaching award may not be included in the calculation of same salary
18 as defined in 20-4-203.

19

20 **Section 4.** Section 20-9-161, MCA, is amended to read:

21 **"20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless
22 the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting
23 means an amendment to an adopted budget of the district for the following reasons:

24 (1) an increase in the enrollment of an elementary or high school district that is:

25 (a) beyond what could reasonably have been anticipated at the time of the adoption of the budget
26 for the current school fiscal year whenever, because of the enrollment increase, the district's budget for
27 any ~~or all~~ of the regularly budgeted funds does not provide sufficient financing to properly maintain and
28 support the district for the entire current school fiscal year; or

29 (b) because of enrollment of students for whom a form to declare the intent to claim an education
30 tax credit was filed as provided in [section 2];

1 (2) the destruction or impairment of any school property necessary to the maintenance of the
2 school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit
3 for its present school use;

4 (3) a judgment for damages against the district issued by a court after the adoption of the budget
5 for the current year;

6 (4) an enactment of legislation after the adoption of the budget for the current year that imposes
7 an additional financial obligation on the district;

8 (5) the receipt of:

9 (a) a settlement of taxes protested in a prior school fiscal year;

10 (b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue
11 or its agents;

12 (c) delinquent taxes from a prior school fiscal year; and

13 (d) a determination by the trustees that it is necessary to expend all or a portion of the taxes
14 received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a
15 previous budget of the district; or

16 (6) any other unforeseen need of the district that cannot be postponed until the next school year
17 without dire consequences affecting the safety of the students and district employees or the educational
18 functions of the district."

19

20 **Section 5.** Section 20-9-162, MCA, is amended to read:

21 **"20-9-162. Authorization for budget amendment adoption.** (1) (a) Notwithstanding the provisions
22 of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year,
23 except that a budget amendment required by an enrollment increase as provided in 20-9-161(1)(a) may
24 not be adopted until after October 1.

25 (b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a
26 resolution.

27 (c) Whenever the trustees of a district decide that a budget amendment is necessary, they may
28 proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must
29 state the facts constituting the need for the budget amendment, the funds affected by the budget
30 amendment, the anticipated source of financing, the estimated amount of money required to finance the

1 budget amendment, and the time and place the trustees will meet for the purpose of considering and
2 adopting the budget amendment for the current school fiscal year.

3 (2) The trustees shall send a copy of the proclamation to the county superintendent and to the
4 board of county commissioners of the county.

5 (3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent
6 of public instruction for approval in the manner provided in 20-9-163."

7

8 **Section 6.** Section 20-9-163, MCA, is amended to read:

9 **"20-9-163. Resolution for budget amendment -- petition to superintendent of public instruction.**

10 (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an
11 enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for
12 the budget amendment. The petition must be signed by a majority of the trustees.

13 (2) The petition must state the facts constituting the need for the budget amendment, the
14 estimated amount of money required to fund the budget amendment, the funds affected by the budget
15 amendment, the anticipated source of financing for the budget amendment, and the current year
16 enrollment.

17 (3) The superintendent of public instruction shall promptly approve or disapprove the petition
18 requesting approval to adopt a resolution for a budget amendment because of increased enrollment. If the
19 petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)(a), the
20 superintendent of public instruction shall adjust the district's maximum general fund budget based on the
21 approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount
22 will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is
23 approved, the trustees may adopt a resolution for a budget amendment and take all other steps required
24 for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction
25 authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the
26 trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of
27 the petition may not be construed as approval of any subsequent application for increased state aid on
28 account of the budget amendment."

29

30 **Section 7.** Section 20-9-311, MCA, is amended to read:

1 **"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging (ANB)
2 must be computed as follows:

3 (a) compute an average enrollment by:

4 (i) adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday
5 in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior
6 school fiscal year, or the next school day if those dates do not fall on a school day ~~and;~~

7 (ii) divide the sum by two; and

8 (iii) subtract the number of students who were enrolled during the prior school fiscal year as
9 indicated on the forms provided for in [section 2]; and

10 (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the
11 pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide
12 by 180.

13 (2) For the purpose of calculating ANB under subsection (1), up to 7 approved
14 pupil-instruction-related days may be included in the calculation.

15 (3) When a school district has approval to operate less than 180 school days under 20-9-806, the
16 total ANB must be calculated in accordance with the provisions of 20-9-805.

17 (4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must
18 be counted as enrollment for one-half day.

19 (5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1),
20 enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon
21 session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not
22 exceed one-half for each kindergarten pupil.

23 (6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school
24 days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the
25 pupil resumes attendance prior to the day of the enrollment count.

26 (7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the
27 ANB calculations.

28 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools
29 of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the
30 schools of the district, except that when:

1 (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city
2 or town located in the district and at least 20 miles from any other school of the district, the number of
3 regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the
4 district must receive a basic entitlement for the school calculated separately from the other schools of the
5 district;

6 (ii) a school of the district is located more than 20 miles from any other school of the district and
7 incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the
8 school must be calculated separately for ANB purposes and the district must receive a basic entitlement
9 for the school calculated separately from the other schools of the district;

10 (iii) the superintendent of public instruction approves an application not to aggregate when
11 conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to
12 travel, or when any other condition exists that would result in an unusual hardship to the pupils of the
13 school if they were transported to another school, the number of regularly enrolled, full-time pupils of the
14 school must be calculated separately for ANB purposes and the district must receive a basic entitlement
15 for the school calculated separately from the other schools of the district; or

16 (iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203,
17 20-6-205, or 20-6-208; two or more high school districts consolidate or annex under the provisions of
18 20-6-315 or 20-6-317; or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part
19 4, the ANB and the basic entitlements of the component districts must be calculated separately for a
20 period of 3 years following the consolidation or annexation;

21 (b) a junior high school has been approved and accredited as a junior high school, all of the
22 regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils
23 for ANB purposes;

24 (c) a middle school has been approved and accredited, all pupils below the 7th grade must be
25 considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be
26 considered high school pupils for ANB purposes; or

27 (d) a school has not been accredited by the board of public education, the regularly enrolled,
28 full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation
29 purposes, nor will an average number belonging for the nonaccredited school be used in determining the
30 BASE funding program for the district.

1 (9) The district shall provide the superintendent of public instruction with semiannual reports of
2 school attendance, absence, and enrollment for regularly enrolled students, using a format determined by
3 the superintendent."

4

5 **Section 8.** Section 20-9-507, MCA, is amended to read:

6 **"20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local,
7 state, federal, or other sources provided in 20-5-324 other than money under the provisions of impact aid,
8 as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the
9 district shall establish a miscellaneous programs fund for the deposit of the money. The money may be
10 a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost
11 recoveries, a distribution of funds for recipients of the Montana excellence in teaching award established
12 pursuant to [section 3], or a grant of money for the financing of expenditures to be realized by the district
13 for a special, approved program to be operated by the district. When the money is a reimbursement or a
14 local government severance tax payment, the money may be expended at the discretion of the trustees
15 for school purposes. When the money is a grant, the money must be expended according to the conditions
16 of the program approval by the superintendent of public instruction or any other approval agent. When the
17 money is distributed for payment to recipients of the Montana excellence in teaching award, the money
18 must be expended pursuant to the provisions of [section 3]. Within the miscellaneous programs fund, the
19 trustees shall maintain a separate accounting for each local, state, or federal grant project ~~and~~, the indirect
20 cost recoveries, and the Montana excellence in teaching award program established pursuant to [section
21 3].

22 (2) The financial administration of the miscellaneous programs fund must be in accordance with
23 the financial administration provisions of this title for a nonbudgeted fund."

24

25 NEW SECTION. **Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as
26 an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply
27 to [section 1].

28 (2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the
29 provisions of Title 20, chapter 3, part 1, apply to [section 2].

30 (3) [Section 3] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the

1 provisions of Title 20, chapter 3, part 3, apply to [section 3].

2

3 NEW SECTION. **Section 10. Effective date -- retroactive applicability.** [This act] is effective on
4 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning
5 after December 31, 2000.

6

- END -