

Fiscal Note Request HB0404, As Introduced

(continued)

- 7. Based on 4 volunteers it is estimated that this bill will reduce general fund revenue by \$2,416 $((\$1,208 \times 4) / 2 = \$2,416)$ in FY2006 and \$4,832 $(\$1,208 \times 4 = \$4,832)$ in FY2007.
- 8. HB 404 allows the district to transfer to the miscellaneous programs fund any monies that the district saves by using a volunteer rather than an employee. The district may also transfer up to one-half of the savings to the district's school flexibility fund. Considering these provisions it is unknown what the fiscal impacts to the state will be.

Montana State Fund (MSF)

- 9. The MSF will adopt classifications and charge premiums so that the MSF will be neither more nor less than self-supporting as is required in law, 39-71-2316(1)(e), MCA.
- 10. There will be no net fiscal impact to the MSF as a result of this legislation. MSF will charge premiums to insure the school districts workers' compensation liability and pay benefits as required in law to injured employees of MSF policyholders.
- 11. Section 1 (4) specifies that the school district will need to provide volunteers with workers compensation insurance. At a \$25,000 equivalent salary for proposes of premium determination for each volunteer teacher rates would be \$204 for each volunteer teacher per year, prior to application of any other underwriting programs to apply to the account such as an experience rating factor based on loss experience.
- 12. It is estimated the school districts' workers compensation premiums will increase to provide coverage for the volunteers provided in legislation but is dependent on the number of volunteers in the school district.

FISCAL IMPACT:

	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
<u>Funding of Expenditures:</u>		
General Fund (01)	\$0	\$0
<u>Revenues:</u>		
General Fund (01)	(\$2,416)	(\$4,832)
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
General Fund (01)	(\$2,416)	(\$4,832)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

This bill will have minimal impact on local revenues. The anticipated premium cost for workers compensation will be \$204 per volunteer, which will be paid from the school district's general fund.

TECHNICAL NOTES:

- 1. Estimates of the number of districts that would utilize this program is uncertain and therefore make the impact on state revenues difficult to predict. For this fiscal note estimates are based solely on the impact 4 volunteers would have.
- 2. This bill does not include fiscal impacts on the Teachers Retirement System since it is unknown the number of volunteers that would replace salaried employees and the contributions that would be made the Teachers Retirement System.

OPI

- 3. While there may be an implied contract with a volunteer, there is no enforceable contract that would require the volunteer to commit to a term of services.

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Department of Revenue (DOR)

4. This bill provides for people to furnish “volunteer” instructional services and gives them a tax deduction for their foregone salary. It apparently provides for a school district to budget for a foregone salary, then section 1 of the bill requires the district to either (1) transfer the foregone salary to its miscellaneous fund to be used to increase paid teacher salaries or provide them incentive bonuses or (2) transfer up to 50% into the district’s flexibility fund and use the remaining to provide the paid-teacher salary increases or bonuses. Uncertified individuals can volunteer as substitute teachers.
5. Under the tax principle that substance rather than form governs taxation, it is likely that for federal income tax, withholding, FUTA, and FICA purposes and for state income tax, withholding, unemployment insurance and workers’ compensation purposes, the teacher would be viewed as (1) receiving a salary equal to the amount of the Montana tax deduction (2) in the same tax year, contributing the salary to the school district and (3) in the following tax year receiving salary equal to the difference between what their state tax liability was with the “deduction” and what their state tax liability would have been without the deduction. The ability to deduct the payment to the school district as a charitable contribution and the amount that could be deducted would likely be tested under IRC §170. Because the donation is coupled with employment and an expectation of personal benefit through the lowered state tax rate, the deduction could be disallowed in full for lacking the requisite “donative intent.” Alternatively, the constructive receipt and contribution could be disregarded and the individual viewed only as receiving compensation income in the second year when the amount of their personal gain is capable of computation.
6. True deductions require an expenditure (or a legally binding, fixed obligation to pay an amount for accrual basis taxpayers), consistent with the individual income tax on “net income,” or annual accretion to wealth. Allowing a taxpayer a deduction against state taxable income in lieu of paying them creates a number of tax and non-tax problems.
7. Most could be avoided by structuring the provision more directly: teachers are already allowed to donate all or part of their salary to a school district and, provided the donation is not tied to their employment and is given with a true donative intent, they will receive a federal and state charitable contribution deduction under IRC §170 and 15-30-121(1)(a). The state could provide a state-level deduction for the full amount, notwithstanding IRC limits might prevent them from claiming the full amount. The structure would resolve problems with federal income tax and FICA and FUTA liability and minimum wage provisions and with state income tax, withholding, workers’ compensation and unemployment insurance tax. Providing for the segregation and expenditures of funds donated as provided in the act would still be required.