

HOUSE BILL NO. 397

INTRODUCED BY J. KNOX

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A REFUNDABLE TAX CREDIT FOR EDUCATION
5 EXPENSES FOR NONPUBLIC SCHOOL EDUCATION; LIMITING THE AMOUNT OF THE TAX CREDIT;
6 DEFINING "EDUCATION EXPENSES"; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN
7 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
10

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

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

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

19 (a) up to \$750, as applied against the first \$750 of qualifying education expenses, for the tax year
20 beginning January 1, 2011, but only for the amount by which those expenses have increased from the previous
21 year;

22 (b) up to \$1,400 for the tax year beginning January 1, 2012;

23 (c) up to \$2,000 for the tax year beginning January 1, 2013;

24 (d) up to \$2,300 for the tax year beginning January 1, 2014; and

25 (e) up to \$2,600 for tax years beginning on or after January 1, 2015.

26 (4) A credit is not allowed under any other provision of this chapter with respect to any amount for which
27 a credit is allowed under this section. Of the credit allowed under this section that is in excess of an individual's
28 tax liability, one-half of the excess may be refunded to the individual.

29 (5) In the case of a married individual filing a separate return, the amount of the credit under subsection
30 (3) is limited to one-half of the applicable amount.

1 (6) (a) As used in this section, "education expenses" includes:

2 (i) fees or tuition for instruction in a nonpublic elementary or secondary school during a regular school
3 day or school year, including tutoring, class trips, driver's education taken as part of the school curriculum, or
4 summer camps, in a grade-appropriate or age-appropriate curriculum that supplements the curriculum and
5 instruction available during the regular school year and that assists a child in improving knowledge of core
6 curriculum areas or expanding knowledge and skills under the accreditation standards;

7 (ii) expenses for textbooks, including books and other instructional materials or equipment used in
8 nonpublic elementary and secondary schools for teaching only those subjects legally and commonly taught in
9 nonpublic elementary or secondary schools in this state;

10 (iii) computer hardware and educational software that assists a child in improving knowledge of core
11 curriculum areas or expanding knowledge and skills and that is purchased for use in the taxpayer's home and
12 not used in trade or business regardless of whether the computer is required by the child's school; and

13 (iv) equipment required for shop, home economics, or art courses.

14 (b) The term does not include:

15 (i) amounts paid to a governmental entity as property taxes, assessments, or fees;

16 (ii) tuition for nursery school or prekindergarten classes;

17 (iii) education expenses after the child has left high school;

18 (iv) instructional books and materials used in the teaching of religious tenets, doctrines, or worship for
19 the purpose of instilling the tenets, doctrines, or worship or books or materials for extracurricular activities;

20 (v) the cost of driving a child to school;

21 (vi) school hot lunches; or

22 (vii) expenses for extracurricular activities.

23

24 **NEW SECTION. Section 2. Intent to claim education tax credit -- form.** (1) The superintendent of
25 public instruction shall provide a form on which to declare the intent to claim an education tax credit. The form
26 must outline the tax credit provided by [section 1] and must contain an affidavit that the individual completing the
27 form intends to enroll a dependent child in a nonpublic school. The form must be distributed to each student
28 attending public school. Forms must also be provided to and be available from each county superintendent of
29 schools.

30 (2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually complete

1 the form provided for in subsection (1) of this section and return the form to the clerk of the school district of
 2 residence by May 10. Each district shall forward the forms to the county superintendent, who shall then forward
 3 the forms to the superintendent of public instruction. The number of eligible dependent children indicated on the
 4 forms who were enrolled in a public school during the year in which the form was filed must be excluded from
 5 ANB calculations for the ensuing school year and may not be included in the 3-year averaging pursuant to
 6 20-9-311.

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

9

10 **Section 3.** Section 20-9-311, MCA, is amended to read:

11 **"20-9-311. Calculation of average number belonging (ANB) -- ~~three-year~~ 3-year averaging.** (1)

12 Average number belonging (ANB) must be computed for each budget unit as follows:

13 (a) compute an average enrollment by:

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

17 (ii) ~~divide~~ dividing the sum by two; and

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

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

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

24 (3) When a school district has approval to operate less than the minimum aggregate hours under
 25 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

26 (4) (a) For the purpose of calculating ANB, enrollment in an education program:

27 (i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time
 28 enrollment;

29 (ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time
 30 enrollment;

1 (iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time
2 enrollment; and

3 (iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

4 (b) Enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per
5 school year may not be included for purposes of ANB.

6 (c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on
7 the hours necessary and appropriate to provide the course within a regular classroom schedule.

8 (d) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school,
9 program, or district may not be counted as more than one full-time pupil for ANB purposes.

10 (5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state
11 superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose
12 of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the
13 purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten
14 enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for
15 districts offering full-time kindergarten.

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

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

21 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a
22 district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the
23 district, except that the ANB is calculated as a separate budget unit when:

24 (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town
25 located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled,
26 full-time pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must
27 receive a basic entitlement for the school calculated separately from the other schools of the district;

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

1 calculated separately from the other schools of the district;

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

8 (iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and
9 the basic entitlements of the component districts must be calculated separately for a period of 3 years following
10 the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional
11 years as follows:

12 (A) 75% of the basic entitlement for the fourth year;

13 (B) 50% of the basic entitlement for the fifth year; and

14 (C) 25% of the basic entitlement for the sixth year.

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

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

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

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

28 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program
29 provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes
30 only if the pupil is offered access to the complete range of educational services for the basic education program

1 required by the accreditation standards adopted by the board of public education.

2 (b) Access to school programs and services for a student placed by the trustees in a private program
3 for special education may be limited to the programs and services specified in an approved individual education
4 plan supervised by the district.

5 (c) Access to school programs and services for a student who is incarcerated in a facility, other than a
6 youth detention center, may be limited to the programs and services provided by the district at district expense
7 under an agreement with the incarcerating facility.

8 (d) This subsection (10) may not be construed to require a school district to offer access to activities
9 governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a
10 pupil who is not otherwise eligible under the rules of the organization.

11 (11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this
12 title and who is:

13 (a) a resident of the district or a nonresident student admitted by trustees under a student attendance
14 agreement and who is attending a school of the district;

15 (b) unable to attend school due to a medical reason certified by a medical doctor and receiving
16 individualized educational services supervised by the district, at district expense, at a home or facility that does
17 not offer an educational program;

18 (c) unable to attend school due to the student's incarceration in a facility, other than a youth detention
19 center, and who is receiving individualized educational services supervised by the district, at district expense, at
20 a home or facility that does not offer an educational program;

21 (d) receiving special education and related services, other than day treatment, under a placement by the
22 trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's
23 expense under an approved individual education plan supervised by the district;

24 (e) participating in the running start program at district expense under 20-9-706;

25 (f) receiving educational services, provided by the district, using appropriately licensed district staff at
26 a private residential program or private residential facility licensed by the department of public health and human
27 services;

28 (g) enrolled in an educational program or course provided at district expense using electronic or offsite
29 delivery methods, including but not limited to tutoring, distance learning programs, online programs, and
30 technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite

1 instructional setting with the approval of the trustees of the district. The pupil shall:

2 (i) meet the residency requirements for that district as provided in 1-1-215;

3 (ii) live in the district and must be eligible for educational services under the Individuals With Disabilities

4 Education Act or under 29 U.S.C. 794; or

5 (iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

6 (h) a resident of the district attending the Montana youth challenge program or a Montana job corps
7 program under an interlocal agreement with the district under 20-9-707.

8 (12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge
9 program participant as half-time enrollment.

10 (13) (a) For an elementary or high school district that has been in existence for 3 years or more, the
11 district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated
12 using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever
13 generates the greatest maximum general fund budget.

14 (b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund
15 budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and
16 high school programs pursuant to subsection (13)(a) and then combined.

17 (14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

18 (a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the
19 previous 2 school fiscal years; and

20 (b) dividing the sum calculated under subsection (14)(a) by three."
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22 **NEW SECTION. Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an
23 integral part of Title 15, chapter 30, part 23, and the provisions of Title 15, chapter 30, part 23, apply to [section
24 1].

25 (2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the
26 provisions of Title 20, chapter 3, part 1, apply to [section 2].
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28 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.
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30 **NEW SECTION. Section 6. Retroactive applicability.** [This act] applies retroactively, within the

1 meaning of 1-2-109, to tax years beginning after December 31, 2010.

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