

HOUSE BILL NO. 397

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A REFUNDABLE TAX CREDIT FOR EDUCATION
EXPENSES TUITION FOR NONPUBLIC SCHOOL EDUCATION; LIMITING THE AMOUNT OF THE TAX
CREDIT; PROVIDING A PHASEOUT OF THE CREDIT BASED ON INCOME; PROVIDING THAT THE INCOME
AMOUNTS ARE ADJUSTED FOR INFLATION; ~~DEFINING "EDUCATION EXPENSES"~~ REQUIRING AN
INFORMATION RETURN FROM A QUALIFIED SCHOOL OR PROGRAM; AMENDING SECTION 20-9-311,
MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. Section 1. Elementary and secondary education tax credit for nonpublic school
education -- DEFINITIONS. (1) There is a credit against the taxes otherwise due under this chapter for qualified
elementary and secondary education ~~expenses~~ TUITION paid by an individual for ~~a dependent child~~ AN ELIGIBLE
STUDENT who is a minor during the tax year and is attending a nonpublic school. In order to claim the credit, the
individual must have completed an intent form FOR EACH ELIGIBLE STUDENT to claim an education tax credit
pursuant to [section 2 3]. ONLY ONE CREDIT FOR EACH ELIGIBLE STUDENT MAY BE CLAIMED IN A TAX YEAR UNDER THIS
SECTION.

(2) ~~Education expenses that qualify~~ TUITION THAT QUALIFIES for the credit under this section ~~are amounts~~
IS AN AMOUNT paid by an individual for ~~a dependent~~ AN ELIGIBLE STUDENT who is in compliance with Title 20,
chapter 5, part 1.

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

(a) up to \$750 FOR EACH ELIGIBLE STUDENT, as applied against the first \$750 of qualifying ~~education~~
~~expenses~~ TUITION, for the tax year beginning January 1, 2011, but only for the amount by which ~~those expenses~~
~~have~~ THE TUITION HAS increased from the previous year;

(b) up to \$1,400 FOR EACH ELIGIBLE STUDENT for the tax year beginning January 1, 2012;

- 1 (c) up to \$2,000 FOR EACH ELIGIBLE STUDENT for the tax year beginning January 1, 2013;
- 2 (d) up to \$2,300 FOR EACH ELIGIBLE STUDENT for the tax year beginning January 1, 2014; and
- 3 (e) up to \$2,600 FOR EACH ELIGIBLE STUDENT for tax years beginning on or after January 1, 2015.
- 4 (4) THE CREDIT MAY NOT BE CLAIMED FOR A CHILD WHO IS HOME-SCHOOLED.
- 5 ~~(4)~~(5) A credit is not allowed under any other provision of this chapter with respect to any amount for
- 6 which a credit is allowed under this section. Of the TOTAL credit allowed under this section that is in excess of an
- 7 individual's tax liability, one-half of the excess may be refunded to the individual.
- 8 ~~(5)~~(6) In the case of a married individual filing a separate return, the amount of the credit under
- 9 subsection (3) is limited to one-half of the applicable amount.
- 10 ~~(6)~~ (a) As used in this section, "education expenses" includes:
- 11 ~~———(i) fees or tuition for instruction in a nonpublic elementary or secondary school during a regular school~~
- 12 ~~day or school year, including tutoring, class trips, driver's education taken as part of the school curriculum, or~~
- 13 ~~summer camps, in a grade-appropriate or age-appropriate curriculum that supplements the curriculum and~~
- 14 ~~instruction available during the regular school year and that assists a child in improving knowledge of core~~
- 15 ~~curriculum areas or expanding knowledge and skills under the accreditation standards;~~
- 16 ~~———(ii) expenses for textbooks, including books and other instructional materials or equipment used in~~
- 17 ~~nonpublic elementary and secondary schools for teaching only those subjects legally and commonly taught in~~
- 18 ~~nonpublic elementary or secondary schools in this state;~~
- 19 ~~———(iii) computer hardware and educational software that assists a child in improving knowledge of core~~
- 20 ~~curriculum areas or expanding knowledge and skills and that is purchased for use in the taxpayer's home and~~
- 21 ~~not used in trade or business regardless of whether the computer is required by the child's school; and~~
- 22 ~~———(iv) equipment required for shop, home economics, or art courses;~~
- 23 ~~———(b) The term does not include:~~
- 24 ~~———(i) amounts paid to a governmental entity as property taxes, assessments, or fees;~~
- 25 ~~———(ii) tuition for nursery school or prekindergarten classes;~~
- 26 ~~———(iii) education expenses after the child has left high school;~~
- 27 ~~———(iv) instructional books and materials used in the teaching of religious tenets, doctrines, or worship for~~
- 28 ~~the purpose of instilling the tenets, doctrines, or worship or books or materials for extracurricular activities;~~
- 29 ~~———(v) the cost of driving a child to school;~~
- 30 ~~———(vi) school hot lunches; or~~

1 ~~_____ (vii) expenses for extracurricular activities.~~

2 (7) (A) FOR AN INDIVIDUAL WHOSE HOUSEHOLD INCOME IS \$75,000 OR MORE BUT LESS THAN \$97,000, THE
 3 AMOUNT OF THE CREDIT IS EQUAL TO THE CREDIT CALCULATED UNDER THIS SECTION MULTIPLIED BY THE DECIMAL
 4 EQUIVALENT OF A PERCENTAGE FIGURE ACCORDING TO THE FOLLOWING TABLE:

5 <u>HOUSEHOLD INCOME</u>	<u>PERCENTAGE OF CREDIT ALLOWED</u>
6 <u>\$75,000 - \$86,000</u>	<u>50%</u>
7 <u>\$86,001 - \$96,999</u>	<u>25%</u>
8 <u>\$97,000 OR MORE</u>	<u>0%</u>

9 (B) FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 2011, THE DEPARTMENT SHALL, BY NOVEMBER 1 OF EACH
 10 YEAR, MULTIPLY THE HOUSEHOLD INCOME AMOUNTS CONTAINED IN SUBSECTION (7)(A) BY THE INFLATION FACTOR FOR
 11 THAT TAX YEAR AND ROUND THE PRODUCT TO THE NEAREST \$100. THE RESULTING ADJUSTED HOUSEHOLD INCOME
 12 AMOUNTS ARE EFFECTIVE FOR THAT TAX YEAR AND MUST BE USED IN CALCULATING THE TAX CREDIT ALLOWED UNDER THIS
 13 SECTION.

14 (8) AS USED IN [SECTIONS 1 AND 2], THE FOLLOWING DEFINITIONS APPLY:

15 (A) "ELIGIBLE STUDENT" MEANS A STUDENT WHO IS A MONTANA RESIDENT AND IS ELIGIBLE TO ENROLL IN AN
 16 ELEMENTARY, MIDDLE SCHOOL, OR SECONDARY SCHOOL PROGRAM IN MONTANA AND WHO:

17 (I) IS ATTENDING A NONPUBLIC SCHOOL OR ENTERING A NONPUBLIC SCHOOL OR TRANSFERRING TO A NONPUBLIC
 18 SCHOOL FROM A PUBLIC SCHOOL; OR

19 (II) IS CURRENTLY PLACED OR DURING THE PREVIOUS FISCAL YEAR WAS PLACED IN FOSTER CARE UNDER THE
 20 SUPERVISION OF THE STATE AND IS ELIGIBLE TO ATTEND A NONPUBLIC SCHOOL.

21 (B) "INCOME" MEANS INCOME AS DEFINED IN 15-30-2337(9)(A). INCOME INCLUDES ALL INCOME RECEIVED BY ALL
 22 INDIVIDUALS OF THE HOUSEHOLD WHILE THEY ARE MEMBERS OF THE HOUSEHOLD.

23 (C) "INFLATION FACTOR" MEANS A NUMBER DETERMINED FOR EACH TAX YEAR BY DIVIDING THE CONSUMER PRICE
 24 INDEX FOR JUNE OF THE TAX YEAR BY THE CONSUMER PRICE INDEX FOR JUNE 2011.

25 (D) "QUALIFIED SCHOOL OR PROGRAM" MEANS A SCHOOL OR PROGRAM THAT:

26 (I) IS A NONPUBLIC ELEMENTARY SCHOOL OR SECONDARY SCHOOL THAT IS LOCATED IN THIS STATE OR IS A
 27 PUBLIC OR PRIVATE SCHOOL LOCATED IN THE UNITED STATES THAT PROVIDES DISTANCE LEARNING INSTRUCTION;

28 (II) IS ACCREDITED OR HAS APPLIED FOR ACCREDITATION OR IS PROVISIONALLY ACCREDITED BY THE BOARD OF
 29 PUBLIC EDUCATION, NORTHWEST ACCREDITATION ASSOCIATION, OR OTHER NATIONALLY RECOGNIZED ACCREDITATION
 30 ASSOCIATION;

1 (III) IS NOT A HOME SCHOOL AS PROVIDED IN 20-5-109;

2 (IV) ADMINISTERS A NATIONALLY RECOGNIZED NORMATIVE ASSESSMENT TEST AND MAKES THE RESULTS
3 AVAILABLE TO PARENTS; AND

4 (V) SATISFIES THE HEALTH AND SAFETY REQUIREMENTS PRESCRIBED BY LAW FOR PRIVATE SCHOOLS IN THIS
5 STATE.

6
7 **NEW SECTION. SECTION 2. EDUCATION TAX CREDIT -- INFORMATION RETURN.** (1) EACH QUALIFIED SCHOOL
8 OR PROGRAM, AS DEFINED IN [SECTION 1], SHALL MAKE AN INFORMATION RETURN TO THE DEPARTMENT CONCERNING THE
9 CREDIT ALLOWED UNDER [SECTION 1]. THE RETURN MUST SHOW THE AMOUNT OF THE TUITION PAID BY AN INDIVIDUAL FOR
10 EACH ELIGIBLE STUDENT AND MUST INCLUDE THE INDIVIDUAL'S NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OR
11 TAXPAYER IDENTIFICATION NUMBER. THE QUALIFIED SCHOOL OR PROGRAM SHALL PROVIDE THE RETURN TO THE
12 INDIVIDUAL MAKING THE TUITION PAYMENT.

13 (2) THE RETURN MUST BE MADE UNDER RULES ADOPTED BY THE DEPARTMENT AND IN THE FORM AND MANNER
14 PRESCRIBED BY THE DEPARTMENT.

15
16 **NEW SECTION. Section 3. Intent to claim education tax credit -- form.** (1) The superintendent of
17 public instruction shall provide a form on which to declare the intent to claim an education tax credit. The form
18 must outline the tax credit provided by [section 1], ~~and~~ must contain an affidavit that the individual completing the
19 form intends to enroll ~~a dependent child in a nonpublic school~~ AN ELIGIBLE STUDENT IN A QUALIFIED SCHOOL OR
20 PROGRAM, AND MUST BE AVAILABLE IN ELECTRONIC FORMAT ON THE SUPERINTENDENT OF PUBLIC INSTRUCTION'S
21 WEBSITE. The form must be distributed to each student attending public school. Forms must also be provided to
22 and be available from each county superintendent of schools.

23 (2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually complete
24 the form provided for in subsection (1) of this section and return the form to the ~~clerk of the school district of~~
25 ~~residence by May 10. Each district shall forward the forms to the county superintendent, who~~ COUNTY
26 SUPERINTENDENT BY MAY 10. THE COUNTY SUPERINTENDENT shall then forward the forms to the superintendent of
27 public instruction. The number of eligible ~~dependent children~~ STUDENTS indicated on the forms who were enrolled
28 in a public school during the year in which the form was filed must be excluded from ANB calculations for the
29 ensuing school year and ~~may not be included in the~~ IF 3-year averaging pursuant to 20-9-314 IS USED, MUST ALSO
30 BE SUBTRACTED FROM THE PREVIOUS 2 YEARS' COUNTS.

1 (3) The superintendent of public instruction shall forward a copy of each form to:
 2 (A) the department of revenue for use in determining eligibility for the tax credit provided for in [section
 3 1]; AND
 4 (B) THE NAMED QUALIFIED SCHOOL OR PROGRAM FOR THE PURPOSE OF THE INFORMATION RETURN REQUIRED
 5 BY [SECTION 2]."
 6

7 **Section 4.** Section 20-9-311, MCA, is amended to read:

8 **"20-9-311. Calculation of average number belonging (ANB) -- ~~three-year~~ 3-year averaging.** (1)

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

10 (a) compute an average enrollment by:

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

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

15 (iii) subtracting the number of ELIGIBLE students who were enrolled during the prior school fiscal year as
 16 indicated on the forms provided for in [section 2 3]; and

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

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

21 (3) When a school district has approval to operate less than the minimum aggregate hours under
 22 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (iii) the superintendent of public instruction approves an application not to aggregate when conditions
30 exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any

1 other condition exists that would result in an unusual hardship to the pupils of the school if they were transported
2 to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately
3 for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the
4 other schools of the district; or

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

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

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

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

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

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

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

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

25 (10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program
26 provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes
27 only if the pupil is offered access to the complete range of educational services for the basic education program
28 required by the accreditation standards adopted by the board of public education.

29 (b) Access to school programs and services for a student placed by the trustees in a private program
30 for special education may be limited to the programs and services specified in an approved individual education

1 plan supervised by the district.

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

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

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

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

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

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

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

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

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

25 (g) enrolled in an educational program or course provided at district expense using electronic or offsite
26 delivery methods, including but not limited to tutoring, distance learning programs, online programs, and
27 technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite
28 instructional setting with the approval of the trustees of the district. The pupil shall:

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

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

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

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

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

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

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

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

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

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

17 (b) dividing the sum calculated under subsection (14)(a) by three.

18 (15) (A) EXCEPT AS PROVIDED IN SUBSECTION (15)(B), FOR THE PURPOSE OF DETERMINING ANB UNDER
19 SUBSECTION (1) OR (13), ELIGIBLE STUDENTS WHO ARE ENROLLED IN A QUALIFIED SCHOOL OR PROGRAM, FOR WHOM TAX
20 CREDITS ARE BEING RECEIVED UNDER [SECTIONS 1 AND 2], AND WHO WERE PREVIOUSLY ENROLLED IN A PUBLIC SCHOOL
21 MUST BE SUBTRACTED FROM THE CURRENT YEAR COUNT, AND IF 3-YEAR AVERAGING IS USED, THEY MUST ALSO BE
22 SUBTRACTED FROM THE PREVIOUS 2 YEARS' COUNTS.

23 (B) ELIGIBLE STUDENTS REFERRED TO IN SUBSECTION (15)(A) WHO RESIDE IN THE PUBLIC SCHOOL DISTRICT IN
24 WHICH THEY WERE PREVIOUSLY ENROLLED MAY NOT BE SUBTRACTED FROM ANB COUNTS IN ANY SCHOOL YEAR DURING
25 WHICH THEY RESIDE IN THE DISTRICT IF THE SUBTRACTION DECREASES THE ANB COUNT TO LESS THAN:

26 (I) 20 STUDENTS IN KINDERGARTEN OR GRADE 1 OR 2;

27 (II) 28 STUDENTS IN GRADE 3 OR 4;

28 (III) 30 STUDENTS IN EACH OF THE GRADES 5 THROUGH 8; OR

29 (IV) 50 STUDENTS IN EACH OF THE GRADES 9 THROUGH 12."

30

1 NEW SECTION. Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an
2 integral part of Title 15, chapter 30, part 23, and the provisions of Title 15, chapter 30, part 23, apply to [section
3 1].

4 (2) [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 30, PART 26, AND
5 THE PROVISIONS OF TITLE 15, CHAPTER 30, PART 26, APPLY TO [SECTION 2].

6 ~~(2)~~(3) [Section 2 3] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the
7 provisions of Title 20, chapter 3, part 1, apply to [section 2 3].

8

9 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

10

11 NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the
12 meaning of 1-2-109, to tax years beginning after December 31, 2010.

13

- END -