



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2015 Biennium

<b>Bill #</b>	HB0288
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<b>Title:</b>	Generally revising school laws creating a special education savings account
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<b>Primary Sponsor:</b>	Schwaderer, Nicholas
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<b>Status:</b>	As Amended in House Committee
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|------------------------------------------------------------------|--------------------------------------------------------|---------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input type="checkbox"/> Needs to be included in HB 2  | <input checked="" type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget        | <input type="checkbox"/> Significant Long-Term Impacts | <input checked="" type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
<b>Expenditures:</b>				
General Fund	\$282,061	\$188,135	\$141,090	\$143,206
State Special Revenue	\$66,896	\$157,922	\$135,395	\$137,426
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$66,896	\$157,922	\$135,395	\$137,426
<b>Net Impact-General Fund Balance:</b>	<u>(\$282,061)</u>	<u>(\$188,135)</u>	<u>(\$141,090)</u>	<u>(\$143,206)</u>

**Description of fiscal impact:** HB 288, as amended, establishes a Montana special education savings account program with 2% administrative fees allowed to be withheld from the funds. This fiscal note determines that those administrative fees would not be enough to cover all expenses so there would be a general fund cost of \$0.47 million in the 2015 biennium.

### FISCAL ANALYSIS

#### Assumptions:

#### **Office of Public Instruction (OPI)**

- HB 288 establishes a Montana special education savings account program. To meet the eligibility requirements for the program a student must have an individualized education program (IEP) that meets the requirements of Individuals With Disabilities Education Act (IDEA), 20 U.S.C 1400, et seq., must be a Montana resident, and has not graduated from high school or reached 19 years of age.
- The student does not meet the eligibility requirements if the student is enrolled in a corrections educational program, participating in a virtual school, correspondence school, or distance learning program that receives state funding, or enrolled in the Montana School for the Deaf and Blind.

3. The special education savings account may be used for payment of tuition and fees to an education provider; textbooks and other instructional materials; educational therapies; fees for certain exams and assessment instruments; services provided by a public school including classes and extracurricular activities; and payment to an eligible postsecondary institution for tuition, books, online courses, or other fees.
4. A parent must enroll each participating child with the resident school district and notify OPI and the resident school district if the parent plans to enroll the child with an approved education provider. The parent is responsible for paying the balance of the education provider's tuition and fees that are not covered by the special education savings account.
5. A parent must submit to OPI, on a quarterly basis, copies of all receipts and account statements related to the Montana special education savings account. If a parent removes a child from an education provider in order to attend the resident public school, the savings account payments must stop. A student receiving funding from Montana special education savings account payments must comply with all education service provider policies.
6. OPI must establish procedures to verify student eligibility; maintain and make public a list of approved education providers; oversee education providers; calculate the amount of special education savings account payment; pay the Office of the Commissioner of Higher Education (OCHE); deduct state aid payments from resident school districts; create a reporting process so that individuals may report suspected violations; develop cooperative agreements with OCHE; exclude education providers for failure to meet eligibility criteria; and notify students and parents immediately if a provider has been excluded.
7. All nonpublic education providers must submit quarterly reports of expense receipts for services provided to participating students (on a form created by OPI).
8. If OPI determines that an audit is needed under the provisions of HB 288, OPI would contract with an auditor to audit the provider's records. Based on school district audit costs reported to OPI, private auditors generally charge \$67/hour. OPI estimates the need for 1,000 hours of auditors' time annually for a total of \$67,000.
9. The education provider must participate in annual state assessment testing or provide another national recognized assessment. The cost to the provider is estimated to be \$47.50 per student plus costs associated with training the provider's staff.
10. Under HB 288, the amount that would be transferred to Montana special education savings accounts is 90% of per-pupil average, not per-ANB average, of total school expenditures for the resident school district for the previous school year. For the FY 2012 school year, the per-pupil average of total public school expenditures was \$7,212 for elementary programs and \$9,405 for high school programs. The funds included in the calculation of the per-pupil average include general fund; transportation; bus depreciation; tuition; retirement; traffic education; nonoperating; lease-rental agreement; compensated absence fund; metal mines tax reserve; state mining impact; litigation reserve; technology acquisition; flexibility fund; debt service; building reserve; and interlocal agreement.
11. Local school districts have a number of fixed costs that do not vary with district enrollment. Expenditures that are more fixed than variable include debt service, bus depreciation, building reserve, and transportation.
12. The resident district must continue to report the student's enrollment for the purpose of calculating the district's average number belonging (ANB).
13. OPI may retain up to 2% of payment amounts to deposit in the OPI Montana special education savings account fund.
14. OPI may adopt necessary policies and rules in order to administer special education savings accounts.
15. In the 2015 biennium, OPI would need 3.00 FTE Financial Specialists to startup the new Montana special education savings account. These positions would write the policies and procedures for the new program and complete the responsibilities described in Assumption #6. The total personal services cost for these three positions is \$200,061 per year. Each position would need an operating budget of \$5,000 per year. After the program start-up is completed, OPI would be able to complete the on-going duties under the bill

with 2.00 FTE. The on-going cost of personal services would be \$133,374 and the operating budget would be \$10,000 in the 2017 biennium.

- 16. The OPI would have total costs for audits and FTE of \$0.28 million dollars per year. The allowed 2% administrative fees in HB 288 would not be available in the first year of implementation of the Montana special education saving accounts program. Therefore, the first year OPI costs would be general fund.
- 17. OPI cannot determine the number of students that would participate in the Montana special education savings account program. Therefore, it is expected that the OPI costs would be one-third covered by the administrative fees and two-thirds covered by the general fund.

**Office of the Commissioner of Higher Education (OCHE)**

- 18. The cost of 1.00 FTE to accept, process, and disburse funds as well as to maintain records and track activity is \$63,996. One-time-only costs office package of \$1,600 (FY 2014 only) and \$1,300 for laptop (FY 2014 only).
- 19. The number of students who would participate in the Montana special education savings account program is not known. It is anticipated that the 2% administrative fee would be sufficient to cover the costs.

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE (OPI)	3.00	3.00	2.00	2.00
FTE (OCHE)	1.00	1.00	1.00	1.00
<b><u>Expenditures:</u></b>				
Personal Services (OPI)	\$200,061	\$200,061	\$133,374	\$135,375
Personal Services (OCHE)	\$63,996	\$63,996	\$64,956	\$65,930
Operating Expenses (OPI)	\$82,000	\$82,000	\$78,155	\$79,327
Operating Expenses (OCHE)	\$2,900	\$0	\$0	\$0
<b>TOTAL Expenditures</b>	<u><u>\$348,957</u></u>	<u><u>\$346,057</u></u>	<u><u>\$276,485</u></u>	<u><u>\$280,632</u></u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$282,061	\$188,135	\$141,090	\$143,206
State Special Revenue (02)	\$66,896	\$157,922	\$135,395	\$137,426
<b>TOTAL Funding of Exp.</b>	<u><u>\$348,957</u></u>	<u><u>\$346,057</u></u>	<u><u>\$276,485</u></u>	<u><u>\$280,632</u></u>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$66,896	\$157,922	\$135,395	\$137,426
<b>TOTAL Revenues</b>	<u><u>\$66,896</u></u>	<u><u>\$157,922</u></u>	<u><u>\$135,395</u></u>	<u><u>\$137,426</u></u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$282,061)	(\$188,135)	(\$141,090)	(\$143,206)
State Special Revenue (02)	\$0	\$0	\$0	\$0

**Technical Notes:**

1. Language specifying the fund structure in accordance with 17-2-102, MCA, for the funds included in the bill would be helpful. This would ensure legislative intent is clear as to the fund type and how the funds should be administered.

**Office of Public Instruction (OPI)**

2. The definition of “education provider” does not ensure that educational services are provided to children by a “qualified” provider. The definition would not make it possible for the OPI to guarantee that all children with disabilities in Montana are receiving a free appropriate public education (FAPE). If the OPI cannot make this assurance, the federal Individuals with Disabilities Education Act (IDEA) dollars are at risk. In the current year that amount is approximately \$37 million.
3. Under current rules, a home school is defined as a private (nonpublic) school. This definition makes children with disabilities in home schools eligible for special education and related services under a private school services plan. If that definition changes, home school children would no longer be eligible for any services.
4. IDEA funds cannot be used to provide services to children that do not provide FAPE and the funds can only be used by the local education agency (LEA) for the excess costs of providing special education and related services. IDEA funds cannot be used for providing college tuition unless the child’s IEP team has determined that those costs are necessary for FAPE for a particular child.
5. Under IDEA, students with disabilities are eligible until 21 years of age if they have not graduated with a regular high school diploma.
6. The term “educational therapies” is not defined.
7. The requirements of Sections 6 and 7 limit the authority of the Superintendent of Public Instruction to monitor and oversee the providers and services provided to children with disabilities. This restriction violates the IDEA requirements for general supervision of special education and related services and would result in the withholding of the IDEA funds by the U.S. Department of Education, which would be a loss of approximately \$37 million per year.
8. Federal (IDEA Part B and Preschool) funds cannot be used to pay non-special education costs (tuition, books, etc.) for a child. Also, the supplanting rules, maintenance of effort (MOE) rules, and Excess Cost rules are all still in effect regarding the use of federal funds.
9. If the district continues to have the student enrolled for ANB purposes, the district continues to have the responsibility for FAPE. This puts the district in the position of having the funds removed, having the parent make choices about who provides services (without regard to the provider’s ability to provide FAPE) and the resident school district being responsible for FAPE. Parents could choose an unqualified provider and then turn around and file a due process complaint against the resident school district for not ensuring FAPE.
10. Under Section 9, funds are held until the child’s 26th birthday. Section 3 limits eligibility to age 19, it is unclear why the funds are held for 7 more years. This does not comply with the expenditure requirements for federal dollars that must be spent within 27 months of award. Also, the federal funds, if held in this manner could not be returned to the state general fund.

**Office of the Commissioner of Higher Education (OCHE)**

11. The bill does not provide any guidance on the fund type in accordance with 17-2-102, MCA, for the Montana special education savings accounts to be managed by OCHE. The source of these funds is state general fund, the bill is not clear if it is the intent of the legislature for these funds to remain state general funds or to be transferred into a new state special revenue fund. In section 2, the new accounts are defined as an “account” but do not define the type of funding of the accounts as either state general fund or state special revenue. Section 9 also requires amounts in the funds to revert to the state general fund upon a student’s 26<sup>th</sup> birthday and this requirement would indicate the funds retain their state general fund nature. Currently, the bill only addresses the fund type in relation to the 2% administrative funds to be retained.

12. OCHE would need appropriation authority for the Montana special education savings accounts in order to comply with Section 9, requiring that parents have the freedom to expend account funds for the purposes listed in section 4. With a new program, it would be difficult to estimate the appropriation needs with a new start up program, but an estimate would be made each biennium and included in HB 2. Since the effective date of the bill is upon passage and approval, appropriation authority would need to be added in HB 2 for the 2015 biennium.
13. The bill does not include any appropriation authority for OCHE to spend the 2% administrative funds retained. Each session, an estimate of this amount would need to be included in HB 2.
14. As currently written, interest earnings on the Montana special education savings account would be credited to the state general fund, rather than remaining with the Montana special education savings account.

**Effect on County or Other Local Revenues or Expenditures:**

1. HB 288 could have a negative effect on school districts' budgeted revenues if the money was deducted for the special education saving accounts. This could create an increase to local property taxes.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*



## Dedication of Revenue 2015 Biennium

GOVERNOR'S OFFICE OF  
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### **17-1-507-509, MCA.**

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**  
Yes, Montana special education savings accounts are set up using state general fund
- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**  
Revenue is segregated for a specific purpose
- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**  
Yes
- d) **Does the need for this state special revenue provision still exist?  Yes  No (Explain)**
- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**  
No
- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**  
Yes, revenue is derived from legislative policy to provide additional state support for education.
- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**  
Use of a new fund ensures that cash is deposited and available before expenses are incurred. Expenditure tracking and analysis is more efficient when they are isolated in a specific fund.