



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2017 Biennium

**Bill #** HB0322

**Title:** Create special needs education savings accounts

**Primary Sponsor:** Jones, Donald W

**Status:** As Introduced

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" 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 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$197,000	\$0	\$0	\$0
State Special Revenue	\$0	\$242,000	\$276,080	\$280,221
Other	\$0	\$0	\$0	\$0
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$286,243	\$288,309	\$290,214
Other	\$0	\$5,438,620	\$5,477,870	\$5,514,059
<b>Net Impact-General Fund Balance:</b>	<u>(\$197,000)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**Description of fiscal impact:** HB 322 establishes a Montana special needs education savings account program, establishes requirements and responsibilities, and provides an appropriation for the program. If all 30,000 eligible students participated in the education savings account, the program would transfer approximately \$200 million annually of state funding and local property tax dollars to the education savings account. The general fund cost for the Office of Public Instruction (OPI) to operate the program in FY 2016 and FY 2017 is estimated to be \$272,000 annually. At least 850 students would need to participate in the program in future years to generate enough funding to cover the estimated cost of operating the program.

### FISCAL ANALYSIS

**Assumptions:**

- HB 322 creates education savings accounts for qualified students. The definition of a “qualified student” is a student between the ages of 5 and 18 (inclusive) who was counted during the previous school year for ANB funding and is not currently enrolled in the Montana School for the Deaf and Blind, Pine Hills Youth

Correctional Facility, or the Riverside Youth Correctional Facility. The student must also meet one of the following criteria:

- a. identified as a student with a disability;
  - b. identified as having a disability under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794;
  - c. attending a school that has an accreditation status of “deficiency;”
  - d. has an approved permanent placement following termination of the parent-child legal relationship pursuant to Title 41, chapter 3, part6;
  - e. is a the sibling of a current or previous recipient of funds from the Montana special needs education savings account; or
  - f. has a parent or guardian who is on active duty or who was killed in the line of duty while a member of the armed forces of the United States.
2. To determine the “district student amount,” the budget limitation ANB is divided into the general fund adopted budget as these are the students on which the budget is based. The same assumptions were made when calculating the “statewide average district student amount”. The following table shows the calculated statewide amounts.

Year	GF Adopted Budgets	ANB	Statewide Student Amount
FY 2015	\$1,040,790,830	149,712	\$6,952
FY 2016	\$1,068,566,525	149,694	\$7,138
FY 2017	\$1,083,824,782	149,973	\$7,227
FY 2018	\$1,098,550,126	150,966	\$7,277
FY 2019	\$1,115,693,472	152,394	\$7,321

3. Based on the October 2014 official enrollment count, 16,361 students are identified as a student with disabilities attending 371 school districts.
4. Based on the October 2014 official enrollment count, 1,625 students are identified under Section 504 attending 151 schools across the state.
5. The OPI has estimated that 11,398 students are attending a school that has an accreditation status of deficiency. These are 53 schools within 32 school districts.
6. Based on the October 2014 official enrollment count, 561 students have a parent or guardian who is on active duty or was killed in the line of duty while a member of the armed forces. These students attend 29 Montana public schools. (The 2014-15 school year is the first year that this information is being collected from schools. It is likely that the October 2014 number is underreported.)
7. The OPI has not accounted for the following situations set forth in HB 322:
  - a) A child who is residing with an approved permanent placement pursuant to Title 41, chapter 3, part 6.
  - b) A child who is the sibling of a current or previous recipient of funds from the special needs account.
8. It is estimated that 29,945 students will be eligible for the Montana special needs education savings account program.
9. The table below is the calculated maximum amount that could be redirected to qualified schools based on eligible students multiplied by the lessor of the statewide average district student amount or district student amount.

FY 2016	FY 2017	FY 2018	FY 2019
\$199,289,586	\$201,683,546	\$203,139,104	\$204,481,112

10. For purposes of this fiscal note, the OPI assumes there would only by administration fees and no revenues in the first year, FY 2016) of implementation of HB 322. In each succeeding year it is assumed that 1,000 students will participate in the special needs education savings account.
11. Section 7 of HB 322 requires 95% of the money to be deposited in a private purpose trust fund to be used for participating students and 5% of the money to be deposited in the OPI special needs education savings state special revenue account established in the bill.
12. The following table represents the amount of funding anticipated in this fiscal note that would be received in the private purpose trust fund (95%) and in the OPI special needs education savings account (5%).

	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
Number of participants	0	850	850	850
Private Purpose (95%)	\$0	\$5,438,620	\$5,477,870	\$5,514,059
OPI Special Needs Ed Savings (5%)	\$0	\$286,243	\$288,309	\$290,214

13. Money deposited into a Montana special needs education savings account may be used on behalf of a student for tuition, fees, software, instructional materials, and a wide range of both curricular and extracurricular services. The account can also be used to pay tuition, books, online courses, or other fees for postsecondary institutions.
14. Education cooperative as used in HB 313 is assumed to be either a multi-district cooperative established under 20-3-363, MCA, or a full-service education cooperative established under 20-7-451, MCA.
15. For students who have not been identified as a student with disabilities, the funds from the educational savings account may not be spent on computer hardware, other technological devices, or transportation.
16. The OPI would use the 2015-16 school year to develop and implement the education savings account program. There are many details related to managing these savings accounts, including consumer financial protections and disclosure regulations, which need to be researched. Application processes and procedures will need to be put in place.
17. HB 322 appropriates \$75,000 to the OPI for FY 2016 and \$30,000 for FY 2017 for program administrative purposes. OPI expects it will need at least 3.00 FTE to develop and operate this program. The personal services budget for 3.00 FTE would be \$202,500 per year, the operating budget would be \$30,000, and indirect costs would total \$39,500. To get the system up and running, OPI will need to hire staff with legal and financial skills. The cost of operating the program in the initial years will be \$272,000 annually.
18. HB 322 establishes a special needs education savings account for the OPI to cover costs associated with the implementation of the program. Five percent of the money transferred to OPI from the resident school districts will be deposited into the account. It is difficult to know how much the five percent will generate in FY 2017.
19. Under HB 313, a parent must notify the Superintendent of Public Instruction in the fall and again in the spring that their child will qualify for the education savings account. The parent signs the contract assurances listed in Section 4 of HB 322.
20. Each parent is required to submit quarterly to the Superintendent of Public Instruction copies of all expense receipts and account statements related to the savings account.
21. The Superintendent of Public Instruction must make information about the program available, conduct audits of accounts, remove parents who do not comply with the contract, and suspend accounts where applicable.
22. The Superintendent of Public Instruction is required to establish rules necessary for administering the program that are limited to the following:
  - a) establishment of no fewer than two time periods each year during which a student's parent may notify the superintendent of the parent's desire for the student to participate in the program. Each time period must be at least one month long. One period must be between October 1 and January 1, and the other

time period must be between March 1 and June 1, based on the superintendent's determination of district and parent needs.

- b) verification of student eligibility pursuant to [section 2];
- c) creation of a parent contract pursuant to [section 4];
- d) notification of the county treasurer and resident school district of the student's participation in the program;
- e) calculation of the amount of the district student amount and the statewide average district student amount;
- f) auditing of expenditures for allowable educational services from a student's account; and
- g) auditing of payments received by qualified schools under the program.

	<u>FY 2016</u> <u>Difference</u>	<u>FY 2017</u> <u>Difference</u>	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE	3.00	3.00	3.00	3.00
<b><u>Expenditures:</u></b>				
Personal Services	\$202,500	\$202,500	\$205,538	\$208,621
Operating Expenses	\$69,500	\$69,500	\$70,543	\$71,601
<b>TOTAL Expenditures</b>	<u>\$272,000</u>	<u>\$272,000</u>	<u>\$276,080</u>	<u>\$280,221</u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$272,000	\$30,000	\$0	\$0
General Fund (01) HB 322 Appropriations	(\$75,000)	(\$30,000)	\$0	\$0
State Special Revenue (02)	\$0	\$242,000	\$276,080	\$280,221
Private Purpose Acct	\$0	\$0	\$0	\$0
<b>TOTAL Funding of Exp.</b>	<u>\$197,000</u>	<u>\$242,000</u>	<u>\$276,080</u>	<u>\$280,221</u>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	286,243	288,309	290,214
Private Purpose Acct	\$0	5,438,620	5,477,870	5,514,059
<b>TOTAL Revenues</b>	<u>\$0</u>	<u>\$5,724,863</u>	<u>\$5,766,179</u>	<u>\$5,804,273</u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$197,000)	\$0	\$0	\$0
State Special Revenue (02)	\$0	44,243	12,229	9,992
Private Purpose Acct	\$0	\$5,438,620	\$5,477,870	\$5,514,059

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

1. School districts may adopt higher general fund budgets to offset the loss of funds related to this bill. In consideration of these increases and not allowing budgets to surpass the highest allowable budget, it is estimated that property taxes could increase.

2. The difference in the potential increase needed to provide for the qualified schools could be greater than the potential schools could vote property tax increases to offset the loss leading to potential budget shortfalls. (The 90% of expenditures go to teacher pay and the cost is the same with 10 or 9 students in the classroom).

**Technical Notes:**

1. Article X, section 6 of the Montana Constitution prohibits aid to sectarian schools. Specifically, “The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.” It is likely that the provisions of HB 322 violate this section of the Montana Constitution.
2. The earliest that the program would become operational is the 2016-17 school year. Language should be added to the bill to recognize that the details of setting up the education savings account program will take planning and development time.
3. The bill does not indicate whether the education savings accounts could be invested to earn interest.
4. HB 322 attempts to bypass the requirements of the Individuals with Disabilities (IDEA) by waiving the Free Appropriate Public Education (FAPE) requirement (page 4 section 4 (c).) but the requirement that the student continue to be enrolled in the district of residence until age 19 for ANB purposes means that the IDEA requirement for providing FAPE for all enrolled students continues. Under this circumstance the parent could take the student to a program that cannot meet the child’s needs, and then file a complaint against the school district for not ensuring that the child received FAPE.
5. Limiting the list of protected classes (“Qualified school ... does not discriminate on the basis of race, color, or national origin”) omits protections provided in the Montana Human Rights Act in 49-2-307: It is unlawful for a public or private educational institution to exclude from admission any student on the basis of “race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds.”
6. HB 322, Section 7, states that the county treasurer administering funds for a student’s resident district needs to redirect the funds back to the Montana special needs education savings account. Some schools manage and invest their own funds and do not work through the county treasurer.
7. Page 2, line 17, states that in order to qualify for an education savings account, a student must have been counted in the prior year for purposes of school district ANB funding. Language is needed for HB 322 to indicate the amount of the education savings account payment allocated to a student who was enrolled on a part-time basis.
8. The budget limit ANB is the student count on which the general fund budget is based.
9. Schools receive state special education monies to serve students in the district. If a substantial portion of these state special education monies follow students to a nonpublic school, the state could have difficulty meeting federal maintenance of effort requirements.

---

*Sponsor’s Initials*

---

*Date*

---

*Budget Director’s Initials*

---

*Date*

	<b><u>Dedication of Revenue 2017 Biennium</u></b>
<small>GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING</small>	

17-1-507-509, MCA.

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**  
Yes, the special needs education state special revenue account would be used to pay administrative expenses for the special needs education savings account program..
- 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.