

SENATE BILL NO. 303
INTRODUCED BY B. GLASER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL FUNDING LAWS; PROVIDING FOR PAYMENT OF SCHOOL ENERGY COSTS; REQUIRING ENERGY AUDITS OF CERTAIN SCHOOLS THROUGH THE STATE BUILDING ENERGY CONSERVATION PROGRAM; MOVING RESPONSIBILITY FOR THE ENERGY CONSERVATION PROGRAM TO THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR ANNUAL INFLATION-RELATED ADJUSTMENTS TO THE BASE FUNDING PROGRAM AMOUNTS FOR SCHOOL DISTRICT BASIC ENTITLEMENTS AND PER-ANB ENTITLEMENTS; PROVIDING FOR 3-YEAR AVERAGING OF ANB FOR SCHOOL DISTRICTS WITH DECLINING AND INCREASING ENROLLMENT; DECREASING THE PERCENTAGE USED FOR CALCULATING UNUSUAL ENROLLMENT FROM 6 PERCENT TO 5 PERCENT; PROVIDING THAT CASH REAPPROPRIATED BY A DISTRICT IN EXCESS OF RESERVES MAY BE RETAINED UP TO 2 YEARS AND REAPPROPRIATED IN THE THIRD YEAR TO FIRST REDUCE THE BASE BUDGET LEVY, WITH ANY REMAINING BALANCE USED TO REDUCE THE OVER-BASE OR ADDITIONAL LEVY; AMENDING SECTIONS 20-9-104, 20-9-306, 20-9-311, AND 20-9-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. State payment of school energy costs -- energy audits.** (1) The department shall enter into contracts with a vendor to collect and pay the utility bills of all public school districts in the state.

(2) The vendor shall monitor all utility bills and forward to the department data collected on each school district's energy use per square foot.

(3) Based on data collected by the vendor and using the environmental protection agency's energy star program to benchmark a school's energy use, the department shall monitor and identify any building in the district in which the energy use exceeded 150% of the school district's average energy use based on a rolling average of energy consumption for the district over the preceding 12 months.

(4) Pursuant to 90-4-607, the department shall oversee the completion of an energy audit or energy study on each building identified in subsection (3) to identify the most cost-effective energy retrofitting for the building.

(5) If retrofitting is appropriate, the department shall finance energy retrofits on the buildings through energy conservation program bonds authorized in 90-4-611 with proceeds deposited in the state special revenue fund pursuant to 90-4-612.

(6) As used in this section, "utility bills" include water, natural gas or other fuels, and electricity.

NEW SECTION. Section 2. Annual inflation-related adjustments to basic entitlement and per-ANB entitlements. (1) The superintendent of public instruction shall adjust the basic entitlement, as defined in 20-9-306, and per-ANB entitlements, as described in 20-9-306:

(a) for the school fiscal year beginning July 1, 2004, by an inflation factor of 103.33%; and

(b) for the school fiscal year beginning July 1, 2005, by an inflation factor of 101.05%.

(2) (a) Beginning in 2004, the superintendent of public instruction shall by October 1 of each even-numbered year calculate the inflation factors for the ensuing biennium as follows:

(i) for the first fiscal year of the ensuing biennium, divide the consumer price index for July of the prior calendar year by the consumer price index for July of the year prior to the prior calendar year; and

(ii) for the second fiscal year of the ensuing biennium, divide the consumer price index for July of the current calendar year by the consumer price index for July of the prior calendar year.

(b) Beginning in 2004, the superintendent of public instruction shall provide each school district and county superintendent, by February 1 of each year, with the adjusted basic entitlement amounts and the per-ANB entitlement amounts for the ensuing school fiscal year.

(3) For the purposes of this section, "consumer price index" means the consumer price index U.S. city average, all urban consumers, for all items, for the base period 1982-84 = 100, as published by the bureau of labor statistics of the U.S. department of labor.

Section 3. Section 20-9-104, MCA, is amended to read:

"20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner

permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and may be retained for up to 2 years in a reserve account and, if not expended by the school district, must be used for property tax reduction as provided in 20-9-141(1)(b) to reduce the BASE budget levy. Any remaining balance may then be used to reduce the over-BASE budget levy or the additional levy provided by 20-9-353.

(5) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less."

Section 4. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may

be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means the following amounts adjusted annually pursuant to [section 2]:

(a) \$213,819 for each high school district;

(b) \$19,244 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows using either the current year ANB or the 3-year ANB, as provided in 20-9-311:

(i) \$19,244 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) \$213,819 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

~~(7)~~(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

~~(8)~~(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and the greater of:

(a) 175% of special education allowable cost payments; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

~~(9)~~(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

~~(10)~~(11) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and adjusted annually according to the provisions of [section 2] and using either the current year ANB

or the 3-year ANB, as provided in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of \$5,205 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of \$3,906 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of \$3,906 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of \$5,205 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 5. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB) -- 3-year averaging. (1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the next school day if those dates do not fall on a school day, and divide the sum by two; and

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

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

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be

counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

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

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

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

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

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

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

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208, two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317, or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the

consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

- (A) 75% of the basic entitlement for the fourth year;
- (B) 50% of the basic entitlement for the fifth year; and
- (C) 25% of the basic entitlement for the sixth year.

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

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

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

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

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

(a) adding the ANB for the district for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (10)(a) by three.

(11)(a) After calculating a district's basic entitlement and total per-ANB entitlement using the 3-year ANB, the calculation must be used for general fund budgeting and funding purposes for school districts in existence for 3 years or more.

(b) The ANB of a school district that has existed less than 3 years must be calculated using the current year ANB enrollment."

Section 6. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment

in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase by which the estimated enrollment ~~increase~~ exceeds the ~~current enrollment~~ enrollment used for determining the 3-year ANB, as provided in 20-9-311; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least ~~6%~~ 5%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is ~~the difference between the~~ determined using the estimated enrollment for the ensuing school fiscal year and ~~106% of the current enrollment. The amount determined is the~~ maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and total per-ANB entitlement 5% of the enrollment for the 3-year ANB, as provided in

20-9-311.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than ~~the average number belonging used for BASE funding program and entitlement calculations~~ the estimated enrollment under subsection (2)(d), the superintendent of public instruction shall revise the ANB used to establish the total per-ANB entitlement and basic entitlement calculations, using the actual ~~average number belonging~~ enrollment for the ensuing school fiscal year minus 5% of the enrollment used to calculate the 3-year ANB, as provided in 20-9-311.

(c) All total per-ANB entitlements received by the district in excess of the revised entitlements calculated in subsection (6)(b) are overpayments subject to the refund provisions of 20-9-344(4)."

Section 7. Section 90-4-602, MCA, is amended to read:

"90-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of ~~environmental quality~~ administration provided for in ~~2-15-3504~~ 2-15-1001.

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities and in school district buildings as provided for in [section 1].

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "School district" means a public elementary or high school district as defined in 20-6-101.

~~(6)~~(7) "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system."

Section 8. Section 90-4-605, MCA, is amended to read:

"90-4-605. Preparation of energy conservation program. (1) The department shall work with state agencies to identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building, and with school districts pursuant to the requirements of [section 1].

(2) Based on the criteria in subsection (1) of this section, on the requirements of [section 1], and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for indepth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) Upon completion of the energy analyses, the department shall identify estimated costs and savings to the state based on these analyses. If the estimated savings are determined to be greater than the bond payment costs for a particular project, the department shall ~~notify the department of administration. Upon receipt of the notification, the department of administration shall~~ implement a design and construction project using bond proceeds for the costs of the project.

(4) The department shall compile a report that must include the following:

- (a) a listing of contacts between the department and other state agencies and school districts;
- (b) a summary of the department's review of agency and school district requests and a selection of projects for indepth analysis;
- (c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project; and
- (d) a listing of additional projects under consideration, for which energy analyses have not been conducted.

(5) The department shall submit the report required by subsection (4) to the governor before September 1 of each even-numbered year."

Section 9. Section 90-4-607, MCA, is amended to read:

"90-4-607. Duties of department. In addition to the duties set forth in 90-4-605, the department is authorized to:

- (1) analyze state utility data to identify high-potential energy conservation projects;
- (2) perform comprehensive energy analyses on state-owned buildings, structures, and facilities; and on school district buildings, contracting with private engineers when necessary;
- ~~(3) transfer funds and authority to the department of administration to:~~
 - (a) procure design and construction of cost-effective energy improvements; and

(b) transfer funds and authority to other agencies or to the office of public instruction for distribution to a school district to procure, design, and construct cost-effective energy improvements; and

(4) train facility maintenance staff in energy saving techniques and maintenance of energy improvements and monitor energy conservation projects to ensure that cost savings are realized and are adequate to cover the debt service if bonds have been issued to fund the improvements."

Section 10. Section 90-4-614, MCA, is amended to read:

"90-4-614. Appropriation of energy cost savings. (1) In preparing the executive budget each biennium, the governor shall include for each state agency or school district participating in the state energy conservation program:

(a) an estimate of the energy cost savings expected for that agency or district in each year of the biennium; and

(b) a projection of the debt service on energy conservation program bonds that should be apportioned to that agency or district in each year of the biennium.

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act the following:

(a) authority for each participating state agency or the office of public instruction to transfer funds in an amount equal to the agency's or a district's projected debt service to the energy conservation program account established in 90-4-612; and

(b) authority for each participating state agency or the office of public instruction to transfer funds to the long-range building program fund in an amount equal to the difference between the estimated energy cost savings to the agency or a district and the projected debt service apportioned to that agency or district.

(3) The current level utility appropriations of state agencies or the office of public instruction for allocation to school districts participating in the energy conservation program must be reduced by the sum of the amounts appropriated in subsections (2)(a) and (2)(b).

(4) Each participating state agency and the office of public instruction shall transfer upon request of the department the amounts appropriated in accordance with subsection (2)."

NEW SECTION. Section 11. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 90, chapter 4, part 6, and the provisions of Title 90, chapter 4, part 6, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 9, part 3, and the

provisions of Title 20, chapter 9, part 3, apply to [section 2].

NEW SECTION. **Section 12. Effective date -- applicability.** [This act] is effective on passage and approval and applies to school fiscal years beginning on or after July 1, 2003.

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