

SENATE BILL NO. 152
INTRODUCED BY D. RYAN
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO EDUCATION; ESTABLISHING A LOAN FORGIVENESS PROGRAM FOR CERTAIN TEACHERS AND CERTIFIED PERSONNEL; PROVIDING A SOURCE OF FUNDING FOR SCHOOL FACILITY IMPROVEMENTS; PROVIDING THAT MINERAL ROYALTIES PURCHASED THROUGH A LOAN FROM THE COAL SEVERANCE TAX PERMANENT FUND IN EXCESS OF THE AMOUNT NECESSARY TO REPAY THE LOAN BE DEPOSITED IN A SCHOOL FACILITY IMPROVEMENT ACCOUNT RATHER THAN THE GUARANTEE ACCOUNT; REVISING THE MORATORIUM ON NEW SCHOOL DISTRICTS TO ALLOW CREATION UNDER CERTAIN CIRCUMSTANCES OF A HIGH SCHOOL DISTRICT FOR THE PURPOSE OF EXPANDING AN ELEMENTARY DISTRICT INTO A K-12 SCHOOL DISTRICT; PROVIDING FULL-TIME ANB FUNDING TO PUBLIC SCHOOL DISTRICTS FOR STUDENTS VOLUNTARILY ENROLLED IN A FULL-TIME KINDERGARTEN PROGRAM OFFERED BY A DISTRICT; PROVIDING A MECHANISM FOR ADJUSTING THE PREVIOUS YEAR'S GENERAL FUND BUDGET TO DETERMINE THE GENERAL FUND BUDGET LIMITATION FOR THE CURRENT YEAR; CHANGING THE METHOD FOR CALCULATING THE BASIC ENTITLEMENT FOR APPROVED AND ACCREDITED JUNIOR HIGH AND MIDDLE SCHOOLS; INCREASING THE QUALITY EDUCATOR PAYMENT; PROVIDING INFLATIONARY INCREASES TO SCHOOLS; REVISING THE GOVERNOR'S POSTSECONDARY SCHOLARSHIP PROGRAM; AMENDING SECTIONS 17-6-340, 20-1-301, 20-3-205, 20-6-104, 20-7-117, 20-9-306, 20-9-308, 20-9-311, 20-9-313, 20-9-314, 20-9-327, 20-26-602, AND 20-26-603, MCA; REPEALING SECTIONS 20-26-611, 20-26-612, AND 20-26-613, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Quality educator loan forgiveness program.** There is a quality educator loan forgiveness program administered by the board of regents through the office of the commissioner of higher education. The program must provide for the direct repayment of educational loans of eligible quality educators in accordance with policies and procedures adopted by the board of regents in accordance with [sections 1 through 6].

NEW SECTION. Section 2. Definitions. For purposes of [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

(2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

(3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

(4) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, who:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (4)(b) of this section in a position that requires an educator license in accordance with administrative rules adopted by the board of public education; or

(ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection (4)(b) to provide services to students.

(b) For purposes of subsection (4)(a), an entity means:

(i) a school district;

(ii) an education cooperative;

(iii) the Montana school for the deaf and blind, as described in 20-8-101; and

(iv) a state youth correctional facility, as defined in 41-5-103.

(5) "School district" means a public school district, as provided in 20-6-101 and 20-6-701.

NEW SECTION. Section 3. Critical quality educator shortage areas. (1) The board of public education, in consultation with the office of public instruction, shall identify:

(a) geographic regions of the state that are impacted by critical quality educator shortages; and

(b) specific certification or endorsement areas that are impacted by critical quality educator shortages.

(2) Quality educators working in an impacted geographic region or an impacted certification or endorsement area are eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under [sections 1 through 6].

NEW SECTION. Section 4. Loan repayment assistance. Loan repayment assistance may be provided

on behalf of a quality educator who:

(1) is employed in a geographic region described in [section 3(1)(a)] or in a certification or endorsement area described in [section 3(1)(b)]; and

(2) has an educational loan that is not in default and that has a minimum unpaid current balance of at least \$1,000 at the time of application.

NEW SECTION. Section 5. Loan repayment assistance documentation. (1) A quality educator shall submit an application for loan repayment assistance to the board of regents in accordance with policies and procedures adopted by the board of regents. The application must include official verification or proof of the applicant's total unpaid accumulated educational loan debt and other documentation required by the board of regents that is necessary for verification of the applicant's eligibility.

(2) A quality educator is eligible for loan repayment assistance for up to a maximum of 4 years. The total annual loan repayment assistance for an eligible quality educator may not exceed \$3,000. The board of regents may require an eligible quality educator to provide documentation that the quality educator has exhausted repayment assistance from other, federal, state, or local loan forgiveness, discharge, or repayment incentive programs.

(3) The board of regents may remit payment of the loan on behalf of the quality educator in accordance with the requirements of [sections 1 through 6] and policies and procedures adopted by the board of regents.

NEW SECTION. Section 6. Funding -- priorities. (1) If the funding for [sections 1 through 6] in any year is less than the total amount for which Montana teachers qualify, the board of regents shall provide preference in the award of loan repayment assistance to quality educators working in the geographic regions that are most impacted by quality educator shortages identified as provided in [section 3].

(2) [Sections 1 through 6] may not be construed to require the provision of loan repayment assistance without an express appropriation for that purpose. [Sections 1 through 6] may not be construed to require loan repayment assistance for school years prior to [the effective date of this section].

Section 7. Section 17-6-340, MCA, is amended to read:

"17-6-340. Purchase of permanent fund mineral estate. The department of natural resources and conservation may purchase the mineral production rights held by the public school fund established in Article X, section 2, of the Montana constitution for fair market value. If the department of natural resources and

conservation purchases mineral production rights, any royalty payments received by the board that are not used to reimburse the coal severance tax trust fund for the loan used for purchasing the mineral production rights must be deposited in the ~~guarantee~~ school facility improvement account provided for in ~~20-9-622~~ [section 8]."

NEW SECTION. Section 8. School facility improvement account. There is a school facility improvement account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools to implement the recommendations of the school facility condition and needs assessment and energy audit conducted pursuant to section 1, chapter 1, Special Laws of 2005, for:

- (1) major deferred maintenance;
- (2) improving energy efficiency in school facilities; and
- (3) critical infrastructure in school districts with changing student populations.

Section 9. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. (1) The school fiscal year begins on July 1 and ends on June 30. At least the minimum aggregate hours defined in subsection (2) must be conducted during each school fiscal year, except that 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient ~~or a minimum of 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117.~~

(2) The minimum aggregate hours required by grade are:

(a) 360 hours for a half-time kindergarten program or 720 hours for a full-time kindergarten program, as provided in 20-7-117;

(b) 720 hours for grades 1 through 3; and

~~(b)~~(c) 1,080 hours for grades 4 through 12.

(3) For any elementary or high school district that fails to provide for at least the minimum aggregate hours, as listed in subsections (1) and (2), the superintendent of public instruction shall reduce the direct state aid for the district for that school year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed."

NEW SECTION. Section 10. Procedure for creation of high school district solely for expansion into K-12 school district -- petition or resolution. (1) An existing elementary district may create a high school district solely for the purpose of expanding an elementary district into a K-12 district only if:

(a) the existing elementary school building is located at a distance of at least 40 miles from the nearest

accessible high school;

(b) the trip from the nearest elementary school building to the nearest accessible high school is 60 minutes or more over the shortest passable route;

(c) periodically during the school year, the condition of the road makes it impractical for students to attend the nearest accessible high school; and

(d) the newly created K-12 district will enroll at least 50 high school students within 3 years after the effective date of the creation of the new district.

(2) The creation of a new high school district may be requested by either:

(a) the electors of the elementary district who are qualified to vote under 20-20-301 and who present a petition that conforms to the provisions of 20-6-105(1) to the county superintendent; or

(b) the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition to create a high school district solely for the purpose of expanding the elementary school district into a K-12 district.

(3) If a valid petition is delivered to the county superintendent, the county superintendent shall hold a hearing pursuant to 20-6-105(6) and, within 30 days after the hearing, issue findings of facts and conclusions of law and an order granting or denying the proposed creation of a new K-12 district.

(4) If a resolution passed by the trustees of the elementary district is delivered to the county superintendent and if the county superintendent receives a resolution consenting to the creation of the high school district passed by the trustees of the high school district from which the property will be transferred, the county superintendent shall, within 10 days after receipt of both resolutions, order an election within the elementary district pursuant to 20-20-201 and conduct the election as prescribed in this title for school elections.

(5) If the proposition for expansion is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, the county superintendent shall order the creation of the high school district and oversee the expansion of the high school district into a K-12 district. The order must be issued within 10 days after the receipt of the election certificate.

(6) The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district. Once the K-12 district has been created, the county superintendent shall transfer the territory included in the new K-12 district from the high school district in which it was previously located.

(7) If a new district is created, the effective date of its creation is the following July 1. The trustees of the

elementary district must be designated as the trustees of the new K-12 district.

(8) Until the county superintendent determines that the new K-12 district is ready to accept students, the existing high school district shall provide high school instruction to students in the newly created K-12 district, with the K-12 district providing tuition pursuant to the provisions of 20-5-320 and 20-5-321.

(9) If the K-12 school district does not open and operate a high school within 3 years after the effective date of the creation of the new district, the order of the county superintendent creating a new district under this section is void and the new district ceases to exist. If the new district does not operate a high school within the 3-year period, the territory must be reincorporated into the district or districts in which it was located before the creation of the new district and the trustees of the new district have no capacity to act.

(10) If a petition has been filed under the provisions of this section and the creation of the new district is denied by the county superintendent following the hearing, a new petition may not be filed until 1 year after the final decision on the original petition.

Section 11. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(f) keep a transcript of the district boundaries of the county;

(g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(i) estimate the average number belonging (ANB) of an opening school in accordance with the provisions

of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(l) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(m) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(n) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313~~(3)~~(1)(c);

(o) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(p) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(q) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(r) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(s) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(t) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(u) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(v) administer the oath of office to trustees without the receipt of pay for administering the oath;

(w) keep a record of official acts, preserve all reports submitted to the superintendent under the

provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(x) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(i) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(ii) the total receipts that were realized in each fund maintained by the district;

(iii) the total expenditures that were made from each fund maintained by the district; and

(iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(y) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202."

Section 12. Section 20-6-104, MCA, is amended to read:

"20-6-104. Moratorium on creation of new district -- ~~exception~~ exceptions. (1) ~~Except as provided in subsections (2) and (3),~~ a school district may not initiate the creation of a new elementary district or a new high school district.

(2) Pursuant to the provisions of [section 10], the trustees or the electors of an existing elementary district may initiate the creation of a new high school district solely for the purpose of expanding into a K-12 district.

~~(2)(3) This section~~ The moratorium in subsection (1) does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704."

Section 13. Section 20-7-117, MCA, is amended to read:

"20-7-117. ~~Five-year-old schooling~~ Kindergarten and preschool programs. (1) The trustees of an elementary district shall establish or make available a kindergarten program capable of accommodating, at a

minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been enrolled by special permission of the board of trustees. The kindergarten program, which the trustees may designate as either a half-time or full-time program, must be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached the age of 5 years of age on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees. A kindergarten program must meet the minimum aggregate hour requirements established in 20-1-301.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed accordingly. Financing of preschool programs may not be supported by money available from state equalization aid."

Section 14. 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;

(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 40% of the special education allowable cost payment;

(c) the total quality educator payment;

(d) the total at-risk student payment;

(e) the total Indian education for all payment; and

(f) the total American Indian achievement gap 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, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, and 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:

(a) ~~\$230,199~~ for each high school district;

~~(i) \$236,552 for fiscal year 2008; and~~

~~(ii) \$243,578 \$243,649 for each succeeding fiscal year;~~

(b) ~~\$20,718~~ for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school;

~~(i) \$21,290 for fiscal year 2008;~~

~~(ii) \$21,922 \$21,929 for each succeeding fiscal year; 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 provided for in 20-9-311:~~

~~(i) \$20,718 times the ratio of the ANB for the kindergarten through grade 6 to the total ANB of kindergarten through grade 8 elementary program;~~

~~(A) \$21,290 for fiscal year 2008; and~~

~~(B) \$21,922 \$21,929 for each succeeding fiscal year; plus~~

~~(ii) \$230,199 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8 \$55,500 for an approved and accredited junior high school program or middle school program.~~

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

(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.

(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, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement

gap payment, 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%.

(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.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying \$200 times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total Indian education for all payment" means the payment resulting from multiplying \$20.40 times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(14) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~\$5,704~~ \$5,861 for fiscal year 2008 and ~~\$6,035~~ \$6,037 for each succeeding fiscal year 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 ~~\$4,456~~ \$4,579 for fiscal year 2008 and ~~\$4,715~~ \$4,716 for each succeeding fiscal year 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 ~~\$4,456~~ \$4,579 for fiscal year 2008 and ~~\$4,715~~ \$4,716 for each succeeding fiscal year 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 ~~\$5,704~~ \$5,861 for fiscal year 2008 and ~~\$6,035~~ \$6,037 for each succeeding fiscal

year 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.

(15) "Total quality educator payment" means the payment resulting from multiplying ~~\$2,000~~ \$2,790 times the number of full-time equivalent educators as provided in 20-9-327."

Section 15. Section 20-9-308, MCA, is amended to read:

"20-9-308. (Temporary) BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) (a) (i) Except as provided in subsections (3)(a)(ii) and (3)(b), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget, whichever is greater. Except as provided in subsection (3)(b), a school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period.

(ii) Except as provided in subsection (3)(b), the trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) ~~A school district that adopted a general fund budget over its maximum general fund budget under any provision of subsection (3)(a) at any time between fiscal year 2001 and fiscal year 2005 may, for fiscal year 2006 and fiscal year 2007, adopt the greater of its maximum general fund budget or the highest actual budget~~

adopted between fiscal year 2001 and fiscal year 2005. For the purpose of calculating the previous year's general fund budget in the initial year of implementation of a full-time kindergarten program established pursuant to 20-7-117, the trustees may not add to the district's adopted general fund budget for the previous year AN AMOUNT EQUAL TO ONE-HALF OF THE KINDERGARTEN ENROLLMENT IN THE PREVIOUS YEAR TIMES THE SUM OF THE MAXIMUM PER-ANB RATE FOR THE ELEMENTARY ANB AND THE INDIAN EDUCATION FOR ALL PAYMENT FOR AN ANB FOR THE PREVIOUS YEAR.

(c) Except as provided in 20-9-353(8), the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(4) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141. (Terminates June 30, 2007--sec. 3, Ch. 190, L. 2005; sec. 25(2), Ch. 462, L. 2005.)

20-9-308. (Effective July 1, 2007) BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district and, except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(3) (a) (i) Except as provided in subsection (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or the previous year's general fund budget,

whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years, but the trustees shall adopt a plan to reach the maximum general fund budget by no later than the end of the 5-year period. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the previous year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) For the purpose of calculating the previous year's general fund budget in the initial year of implementation of a full-time kindergarten program established pursuant to 20-7-117, the trustees may not add to the district's adopted general fund budget for the previous year AN AMOUNT EQUAL TO ONE-HALF OF THE KINDERGARTEN ENROLLMENT IN THE PREVIOUS YEAR TIMES THE SUM OF THE MAXIMUM PER-ANB RATE FOR THE ELEMENTARY ANB AND THE INDIAN EDUCATION FOR ALL PAYMENT FOR AN ANB FOR THE PREVIOUS YEAR.

~~(b)~~(c) The trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

- (4) The BASE budget for the district must be financed by the following sources of revenue:
- (a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;
 - (b) county equalization aid, as provided in 20-9-331 and 20-9-333;
 - (c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;
 - (d) payments in support of special education programs under the provisions of 20-9-321;
 - (e) nonlevy revenue, as provided in 20-9-141; and
 - (f) a BASE budget levy on the taxable value of all property within the district.
- (5) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 16. Section 20-9-311, MCA, is amended to read:

"20-9-311. (Temporary) Calculation of average number belonging (ANB) -- three-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 180 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 the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) ~~Except as provided in subsection (5), for~~ For the purpose of calculating ANB, enrollment in an education program:

(i) from 181 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

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

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

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

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

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

(d) A pupil in ~~grades 1~~ kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

~~(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes~~ For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year.

(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 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 districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, 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) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

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

plan supervised by the district.

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

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

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

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

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

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

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

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

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

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

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

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

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

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

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

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

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

(a) adding the ANB for the budget unit 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 (13)(a) by three. (Terminates June 30, 2007--sec. 25(2), Ch. 462, L. 2005.)

20-9-311. (Effective July 1, 2007) Calculation of average number belonging (ANB) -- three-year averaging. (1) Average number belonging (ANB) must be computed 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 180 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 the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) ~~Except as provided in subsection (5), for~~ For the purpose of calculating ANB, enrollment in an education program:

(i) from 181 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

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

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

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

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

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

(d) A pupil in ~~grades 1~~ kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

~~(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment in a program that provides 360 or more aggregate hours of pupil instruction per school year must be counted as one-half pupil for ANB purposes~~ For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year.

(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 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 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 districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, 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) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

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

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

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

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

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

(a) adding the ANB for the budget unit 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 (13)(a) by three."

Section 17. Section 20-9-313, MCA, is amended to read:

"20-9-313. Circumstances under which regular average number belonging may be increased. (1)

The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

~~(1)~~(a) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

~~(2)~~(b) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

~~(3)~~(c) a district anticipates an increase in the average number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the

superintendent of public instruction no later than the fourth Monday in June.

~~(4)(d)~~ a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

~~(5)(e)~~ for the initial year of operation of a kindergarten program established under 20-7-117(1), the ANB to be used for budget purposes is ~~the same as~~:

(i) one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a half-time kindergarten program as provided in 20-1-301; or

(ii) the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a full-time kindergarten program as provided in 20-1-301; or

~~(6)(f)~~ a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) This section does not apply to the expansion of a half-time kindergarten program to a full-time kindergarten program."

Section 18. Section 20-9-314, MCA, is amended to read:

"20-9-314. (Temporary) 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)(1)(d)~~, 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 by which the estimated enrollment exceeds the enrollment used for the budgeted ANB; 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 greater than 6%.

(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 determined using the difference between the enrollment for the ensuing school fiscal year and 106% of the enrollment used to calculate the budgeted ANB. 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.

(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 enrollment used to determine budgeted ANB, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations, as provided in subsection (5), using the actual enrollment in place of the estimated enrollment.

(c) All total per-ANB entitlements received by the district in excess of the revised entitlements are

overpayments subject to the refund provisions of 20-9-344(4). (Terminates June 30, 2007--sec. 25(2), Ch. 462, L. 2005.)

20-9-314. (Effective July 1, 2007) 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)(1)(d), 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; 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%.

(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 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.

(6) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for BASE funding program and entitlement calculations, the superintendent of public instruction shall revise the total per-ANB entitlement and basic entitlement calculations using the actual average number belonging. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4)."

Section 19. Section 20-9-327, MCA, is amended to read:

"20-9-327. Quality educator payment. (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101; and
- (iv) state youth correctional facilities, as defined in 41-5-103.

(b) A special education cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.

(3) The quality educator payment is ~~\$2,000~~ ~~\$2,790~~ ~~times~~ CALCULATED AS PROVIDED IN 20-9-306 USING the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) in a position that requires an educator license in accordance with the administrative rules adopted

by the board of public education; or

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students."

Section 20. Section 20-26-602, MCA, is amended to read:

"20-26-602. Governor's postsecondary scholarship program -- purpose -- duties of council -- duties of board. (1) There is a governor's postsecondary scholarship program administered by the board through the office of the commissioner of higher education with assistance from ~~a three-member~~ the council ~~created in 2-15-1524.~~

~~(2) The council shall review the lists and applications submitted in accordance with procedures adopted by the board pursuant to 20-26-611. From those lists and applications, the council shall prepare and submit a final list of qualified scholarship recipients to the board. Following consultation with the council, the board shall pay for scholarships awarded to qualified recipients.~~

~~———— (3) The board may accept donations from public or private sources and shall distribute these funds to the scholarship program and in accordance with the criteria determined by the board in consultation with the council.~~

~~———— (4) Funds from public sources may not be used to pay for scholarships to students enrolled in Montana private colleges.~~

~~———— (5) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to be used by the board to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.~~

(2) The purpose of the governor's postsecondary scholarship program is to provide scholarships on the basis of need and merit to Montana residents for the cost of attendance at 2-year and 4-year postsecondary institutions and to allocate some of the scholarships to specific areas of study that promote economic development or address critical workforce shortage areas in Montana.

(3) The council shall gather information and make recommendations for the board to consider in the board's adoption of policies and procedures under this part. The recommendations must attempt to promote efficient administration of the governor's postsecondary scholarship program.

(4) After consideration of the council's recommendations pursuant to subsection (3), the board shall adopt policies and procedures for administration of the governor's postsecondary scholarship program consistent

with this part.

(5) Subject to available funding, scholarships must be awarded on an annual basis to qualified recipients pursuant to policies adopted by the board. The board may delegate to Montana high schools and postsecondary institutions the authority to review scholarship applications and select scholarship recipients."

Section 21. Section 20-26-603, MCA, is amended to read:

"20-26-603. Definitions. As used in this part, the following definitions apply:

(1) "Accredited" means a school that is accredited by the board of public education pursuant to 20-7-102.

~~(2) "At-large student" means a Montana resident who meets the admission requirements established by board policy or by the admissions office of a Montana private college.~~

~~(3)~~(2) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

~~(4) "Certificate program" or "certificate" means a program generally completed in 1 academic year that requires less than 60 credits and that is not a self-supporting, customized training course or the certificate awarded for completion of the program.~~

~~(5)~~(3) "Council" means the governor's postsecondary scholarship advisory council created in 2-15-1524.

~~(6)~~(4) "Montana private college" means a nonprofit private educational institution as defined in 15-30-163(3)(b).

~~(7) "Nontraditional student" means a first-time student who enters a postsecondary institution or Montana private college more than 3 years after high school graduation. As used in this subsection, "first-time student" means a student who is attending a postsecondary institution to receive a first certificate or associate or baccalaureate degree.~~

~~(8)~~(5) "Postsecondary institution" means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

~~(9)~~(6) "Scholarship" means a payment toward tuition and mandatory fees, excluding room and board the cost of attendance at a qualifying postsecondary institution, rounded up to the nearest dollar.

~~(10)~~(7) "Title IV" refers to Title IV of the Higher Education Act of 1965, as amended."

NEW SECTION. **Section 22. Types and amounts of scholarships -- criteria.** (1) Scholarships must

be awarded under the governor's postsecondary scholarship program in accordance with the requirements of this section and criteria established by board policy and procedures pursuant to 20-26-602 and this section.

(2) Scholarships must be awarded on the basis of merit and need. Scholarships may be for either \$1,000 or \$2,000. Merit-based and need-based scholarships must be awarded in approximately equal monetary amounts.

(3) A merit-based scholarship must be awarded to at least one graduate of each accredited high school in Montana, including accredited nonpublic high schools.

(4) ~~A portion~~ AT LEAST 25% of the money appropriated for need-based scholarships must be designated for applicants planning to attend 2-year postsecondary institutions and focus on specific areas of study that promote economic development or address current or projected critical workforce shortage areas in Montana, such as technology, health sciences, or trades, as provided under policies established by the board pursuant to 20-26-602.

NEW SECTION. Section 23. Eligibility requirements -- renewals -- limited appeals. (1) Scholarships must be awarded under the governor's postsecondary scholarship program in accordance with the eligibility requirements of this section and pursuant to policies and procedures established by the board pursuant to 20-26-602 and this section.

(2) To be eligible to receive a scholarship, a student must be a Montana resident eligible for in-state tuition as determined by board policy.

(3) To be eligible to receive a merit-based scholarship, a student must have attained a minimum grade point average or numerical score on a standardized college admission test as prescribed by board policy.

(4) To be eligible to receive a need-based scholarship, the student must complete the standard free application for federal student aid form and the student's expected family contributions may not exceed the cost of attendance at the postsecondary institution that the student expects to attend.

(5) Scholarships must be awarded to students seeking their first 2-year or 4-year certificate or degree at a postsecondary institution.

(6) Scholarships may be renewed in accordance with board policy. The policy must include proof of satisfactory academic performance.

(7) Scholarships may be terminated in accordance with board policy.

(8) The board shall establish policies and procedures:

(a) to allow a student to transfer from one postsecondary institution to another without loss of the

scholarship; and

(b) to ensure compliance with [section 24(3)] if a student transfers from a postsecondary institution to a Montana private college.

(9) A scholarship recipient's right to receive other financial aid, awards, and scholarships may be limited as required by federal or state law or board policy.

(10) A student is ineligible to receive a scholarship under the provisions of this part if the student:

(a) has been awarded a Montana university system honor scholarship;

(b) has failed to meet the federal Title IV selective service registration requirements;

(c) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(d) is incarcerated. Upon release, the student may begin receiving scholarship payments if the student meets all other eligibility requirements. If approved by the board, credits earned during incarceration may be counted toward eligibility.

(11) (a) Except as provided in subsection (11)(b), scholarship awards are not subject to appeal.

(b) A student may appeal the termination of a scholarship based on extenuating circumstances in accordance with board policy.

NEW SECTION. Section 24. Public and private sources of funding -- restrictions on use -- accounting. (1) The board may accept donations from public or private sources and shall distribute those funds in accordance with this part.

(2) Except when a donor of private funds designates that scholarship funds must be given to students attending a private college, scholarship awards are determined solely by the board or an entity designated by the board pursuant to board policy adopted under 20-26-602.

(3) Funds from public sources may not be used to pay for scholarships for students enrolled in Montana private colleges.

(4) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.

(5) Each postsecondary institution or Montana private college that receives scholarship payments shall prepare and submit to the board, in accordance with procedures and policies established by the board, a report of the postsecondary institution's or Montana private college's administration of the scholarships and a complete

accounting of scholarship funds.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

(7) Except for funds donated from private sources, the obligation for funding the governor's postsecondary scholarship program is an obligation of the state. This section may not be construed to require the board to provide scholarships to an eligible student without an appropriation to the board for the purposes of this part. Funds from private sources may not be used as an offset to general fund appropriations.

NEW SECTION. Section 25. Repealer. Sections 20-26-611, 20-26-612, and 20-26-613, MCA, are repealed.

NEW SECTION. Section 26. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 20, chapter 4, and the provisions of Title 20, chapter 4, apply to [sections 1 through 6].

(2) [Section 8] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 8].

(3) [Section 10] is intended to be codified as an integral part of Title 20, chapter 6, part 3, and the provisions of Title 20, chapter 6, part 3, apply to [section 10].

(4) [Sections 22 through 24] are intended to be codified as an integral part of Title 20, chapter 26, part 6, and the provisions of Title 20, chapter 26, part 6, apply to [sections 22 through 24].

NEW SECTION. Section 27. Effective dates. (1) [Sections 10 and 12 and this section] are effective on passage and approval.

(2) [Sections 1 through 9, 11, 13 through 26, and 28] are effective July 1, 2007.

NEW SECTION. Section 28. Applicability. [This act] applies to school district budgets for fiscal years beginning on or after July 1, 2007.

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