

HOUSE BILL NO. 322

INTRODUCED BY D. JONES, K. HANSEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA SPECIAL NEEDS EDUCATION
5 SAVINGS ACCOUNT PROGRAM; PROVIDING DEFINITIONS; ESTABLISHING REQUIREMENTS FOR
6 ELIGIBILITY AND ALLOWABLE EXPENSES; PROVIDING RESPONSIBILITIES FOR PARENTS; AND THE
7 SUPERINTENDENT OF PUBLIC INSTRUCTION, ~~AND COUNTY TREASURERS~~; CLARIFYING THE
8 AUTONOMY OF PARTICIPATING PRIVATE SCHOOLS; PROVIDING RULEMAKING AUTHORITY; PROVIDING
9 AN APPROPRIATION AND A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Montana special needs education savings account program -- findings**
15 **and purposes.** (1) There is a Montana special needs education savings account program provided by the
16 legislature as a desirable educational program pursuant to the legislature's authority under Article X, section 1,
17 subsection (3), of the Montana constitution.

18 (2) The legislature finds that expanding special needs educational opportunities from kindergarten
19 through postsecondary education within the state is a valid public purpose.

20 (3) The purposes of [sections 1 through 7] pursuant to Article X, section 1, subsection (1), of the Montana
21 constitution are to:

22 (a) enable parents to make short-term and long-term decisions on how best to educate their special
23 needs children; and

24 (b) ensure that each Montana child has access to the best educational programs possible to develop
25 the child's full educational potential.

26
27 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions
28 apply:

29 (1) "District student amount" means the amount of money calculated by dividing a school district's
30 adopted general fund budget by the number of full-time pupils on which the budget is based.

1 (2) "Eligible postsecondary institution" means an accredited postsecondary institution located in
2 Montana.

3 (3) "Montana special needs education savings account" or "account" means an account into which a
4 payment under [section 7] is deposited on behalf of a qualified student for the purpose of purchasing allowable
5 educational services pursuant to [section 3].

6 (4) "Parent" means a biological parent, adoptive parent, or other legal guardian of a child whose parental
7 rights have not been terminated.

8 (5) "Qualified school" means a nonpublic school serving any combination of grades kindergarten through
9 12 that:

10 (a) is in compliance with applicable local health and safety regulations;

11 (b) holds a valid occupancy permit, if required by the municipality;

12 (c) does not discriminate on the basis of race, color, or national origin; and

13 (d) requires that any employee who may have unsupervised access to children be subject to a criminal
14 history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c).

15 (6) "Qualified student" means a resident of Montana who:

16 (a) (i) is at least 5 years of age and has not graduated from high school or reached 19 years of age;

17 (ii) was counted during the previous year for purposes of school district ANB funding, was enrolled during
18 the previous year in a program listed in subsection (6)(a)(iii), or is eligible to enter kindergarten; and

19 (iii) is not currently enrolled in a school operating for the purpose of providing educational services to
20 youth in department of corrections commitment programs or in the Montana school for the deaf and blind; and

21 (b) is any of the following:

22 (i) identified as a "child with a disability" under the Individuals With Disabilities Education Act, 20 U.S.C.
23 1400, et seq.;

24 (ii) identified as having a disability under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794;

25 ~~(iii) attending a school that has an accreditation status of "deficiency";~~

26 ~~(iv)~~(iii) a child who is residing with an approved permanent placement following termination of the
27 parent-child legal relationship pursuant to Title 41, chapter 3, part 6;

28 ~~(v)~~(iv) a child who is the sibling of a current or previous recipient of funds from the Montana special needs
29 education savings account; or

30 ~~(vi)~~(v) a child of a parent or with a guardian who is a member of the armed forces of the United States

1 and is on active duty or who was killed in the line of duty while a member of the armed forces of the United States.

2 A child who meets the requirements of this subsection ~~(6)(b)(vi)~~ (6)(B)(v) is not subject to subsection (6)(a)(ii).

3 (7) "Resident school district" means the school district in which a student resides.

4 (8) "Statewide average district student amount" means the statewide total of districts' adopted general
5 fund budgets divided by the statewide total number of full-time pupils on which the budgets are based.

6
7 **NEW SECTION. Section 3. Use of Montana special needs education savings account -- allowable**
8 **educational services.** Money deposited in a Montana special needs education savings account may be used
9 on behalf of the student for:

10 (1) payment for tuition, fees, textbooks, software, or other instructional materials or services to a qualified
11 school;

12 (2) payment for an educational program or course using electronic or offsite delivery methods, including
13 but not limited to tutoring, distance learning programs, online programs, and technology delivered learning
14 programs;

15 (3) payment for purchase of curriculum, including supplemental materials required by the curriculum;

16 (4) tutoring;

17 (5) educational therapies or services from a licensed or certified practitioner or provider, including
18 licensed or certified paraprofessionals or educational aides;

19 (6) fees for state or nationally recognized assessment tests, advanced placement exams, entrance
20 examinations at an eligible postsecondary institution, or other assessment instruments;

21 (7) services provided by a public school in Montana, including individual classes and extracurricular
22 activities;

23 (8) payment to an eligible postsecondary institution for tuition, books, online courses, or other fees;

24 (9) no more than \$50 annually in consumable education supplies, such as paper, pens, and markers;

25 (10) fees paid to a fee-for-service transportation provider for transportation required for another allowable
26 educational service; or

27 (11) fees paid to an education cooperative.

28
29 **NEW SECTION. Section 4. Parent responsibilities.** (1) In order for a qualified student to participate
30 in the Montana special needs education savings account program, the student's parent shall notify the

1 superintendent of public instruction during the time periods designated by the superintendent pursuant to [section
2 5] and sign a contract to do the following:

3 (a) utilize account funds only to procure allowable educational services to develop the student's full
4 educational potential. Except for a student who is qualified pursuant to [section 2(6)(b)(i)], procured allowable
5 educational services must include but are not limited to study of:

6 (i) language arts;

7 (ii) mathematics;

8 (iii) history and civics; and

9 (iv) science.

10 (b) not spend account funds on:

11 (i) computer hardware or other technological devices; or

12 (ii) transportation for the student, except as provided in [section 3];

13 (c) release the resident school district from all obligations to educate the qualified student, including any
14 requirements that the district provide a free and appropriate education to the qualified student or develop an
15 individualized education program for the qualified student;

16 (d) pay the balance of the cost of procured allowable educational services that exceeds the balance of
17 the student's Montana special needs education savings account;

18 (e) quarterly submit to the superintendent of public instruction copies of all expense receipts and account
19 statements related to the Montana special needs education savings account;

20 (f) not register the student as home schooling under 20-5-109; and

21 (g) if the student enrolls at a qualified school, ensure that the student:

22 (i) remains in attendance unless excused by the qualified school for illness or other good cause; and

23 (ii) complies with the qualified school's published policies.

24 (2) A parent may choose at any time to have the student attend classes full-time in the resident school
25 district. If the student enrolls full-time in the resident school district, payments for the student to the Montana
26 special needs education savings account must cease.

27 (3) A signed contract under subsection (1) meets the requirements of compulsory enrollment exemption
28 under 20-5-109.

29

30 **NEW SECTION. Section 5. Responsibilities of superintendent of public instruction -- rulemaking.**

1 (1) The superintendent of public instruction shall make information about the program accessible through printed
2 informational materials and the office of public instruction website to parents, students, and school districts.

3 (2) The superintendent of public instruction shall conduct or contract for full or partial annual audits of
4 Montana special needs education savings accounts to ensure that account funds are spent only on allowable
5 educational expenses.

6 (3) The superintendent of public instruction may remove a qualified student from eligibility for a Montana
7 special needs education savings account if the parent fails to comply with the terms of the contract signed
8 pursuant to [section 4], knowingly misuses account funds, or knowingly fails to comply with the terms of the
9 contract with intent to defraud. If a qualified student is removed from eligibility, the superintendent shall suspend
10 the account and shall notify the parent in writing that the account has been suspended and that no further
11 transactions will be allowed or disbursements made. The notification shall specify the reason for the suspension
12 and state that the parent has 10 business days to respond and take corrective action. If the parent refuses or fails
13 within the 10-day period to contact the superintendent or provide information or make a report that is required
14 for reinstatement, the superintendent may remove the qualified student pursuant to this subsection (3). A parent
15 may appeal the superintendent's decision pursuant to Title 2, chapter 4, part 6.

16 (4) The superintendent of public instruction may refer cases of substantial misuse of account funds to
17 the attorney general for investigation if the superintendent obtains evidence of fraudulent use of an account.

18 (5) The superintendent of public instruction shall establish rules necessary for administering the program
19 that are limited to the following:

20 (a) establishment of no fewer than two time periods each year during which a student's parent may notify
21 the superintendent of the parent's desire for the student to participate in the program. Each time period must be
22 at least 1 month long. One period must be between October 1 and January 1, and the other time period must be
23 between March 1 and June 1, based on the superintendent's determination of district and parent needs.

24 (b) verification of student eligibility pursuant to [section 2];

25 (c) creation of a parent contract pursuant to [section 4];

26 (d) notification of the ~~county treasurer and~~ resident school district of the student's participation in the
27 program;

28 (e) calculation of the amount of the district student amount and the statewide average district student
29 amount;

30 (f) auditing of expenditures for allowable educational services from a student's account; and

1 (g) auditing of payments received by qualified schools under the program.

2

3 **NEW SECTION. Section 6. Qualified schools -- accountability -- autonomy.** (1) To ensure that public
4 funds are spent appropriately, qualified schools receiving special needs education savings account payments
5 shall demonstrate their financial accountability by submitting quarterly to the superintendent of public instruction,
6 on a form established by the superintendent, a report of receipts and expenditures for services provided to
7 participating students.

8 (2) (a) Except as otherwise provided in [sections 1 through 7], a qualified school is autonomous and is
9 not an agent of the state or federal government.

10 (b) Neither the superintendent of public instruction nor any other state agency may regulate the
11 educational program of a qualified school that enrolls an eligible student.

12 (c) The creation of the Montana special needs education savings account program does not expand the
13 regulatory authority of the state, its officers, or a school district to impose additional regulation on qualified schools
14 beyond that reasonably necessary to enforce the requirements of the Montana special needs education savings
15 account program.

16

17 **NEW SECTION. Section 7. Montana special needs education savings account -- funding and**
18 **administration.** (1) ~~After receiving notification from~~ FOLLOWING RECEIPT OF A SIGNED CONTRACT PURSUANT TO
19 [SECTION 4], the superintendent of public instruction ~~of a student's participation in the program, the county~~
20 ~~treasurer administering funds for the student's resident school district shall by the 10th day of the month from~~
21 ~~September through June of the school year transfer~~ SHALL WITHHOLD from the resident school district's ~~general~~
22 ~~fund account to the office of public instruction~~ BASE AID PAYMENTS, PURSUANT TO 20-9-344, FOR THE MONTHS OF
23 AUGUST THROUGH MAY an amount calculated by:

24 (a) determining the lesser of the district student amount and the statewide average district student
25 amount; and

26 (b) dividing the amount determined in subsection (1)(a) by 10.

27 (2) The resident school district shall continue to include the student in the district's ANB count until the
28 student graduates, reaches 19 years of age, or no longer resides in the district. No other school district may count
29 the student for ANB purposes.

30 (3) The office of public instruction shall account for the money ~~transferred~~ WITHHELD under subsection

1 (1) as follows:

2 (a) 95% of the money must be deposited in a private purpose trust fund that has separate accounting
3 for each participating student, is managed pursuant to subsection (4), and is used only for allowable educational
4 services pursuant to [section 3]; and

5 (b) 5% of the money must be deposited in the office of public instruction special needs education savings
6 account established in subsection (5).

7 (4) The office of public instruction shall manage the individual student accounts pursuant to subsection
8 (3)(a) so that:

9 (a) funds can be readily expended on allowable educational services for a participating student pursuant
10 to [section 3]; and

11 (b) on a student's 24th birthday, the student's account can be closed and any remaining funds in the
12 student's account returned to the state general fund.

13 (5) (a) There is an office of public instruction special needs education savings account within the state
14 special revenue fund created in 17-2-102 consisting of 5% of the money ~~transferred to~~ WITHHELD BY the office of
15 public instruction pursuant to subsection (1).

16 (b) Funds in the office of public instruction special needs savings account are statutorily appropriated,
17 as provided in 17-7-502, to the office of public instruction and must be used for the costs of administering the
18 program.

19

20 **Section 8.** Section 17-7-502, MCA, is amended to read:

21 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
22 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
23 need for a biennial legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
25 of the following provisions:

26 (a) The law containing the statutory authority must be listed in subsection (3).

27 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
28 appropriation is made as provided in this section.

29 (3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105;
30 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310;

1 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
 2 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
 3 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
 4 19-20-604; 19-20-607; 19-21-203; [section 7]; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004;
 5 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105;
 6 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113;
 7 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150;
 8 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161;
 9 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

10 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 11 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 12 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 13 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 14 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 15 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 16 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
 17 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
 18 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
 19 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
 20 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the
 21 inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331
 22 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30,
 23 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec.
 24 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2),
 25 Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5,
 26 Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant
 27 to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30,
 28 2015.)"

29

30 NEW SECTION. **Section 9. Appropriation.** The following money is appropriated from the state general

1 fund to the office of public instruction:

2 (1) for fiscal year 2016, \$75,000 for the purpose of Montana special needs education savings account
3 program administrative costs; and

4 (2) for fiscal year 2017, \$30,000 for the purpose of Montana special needs education savings account
5 program administrative costs.

6
7 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
9 the part remains in effect in all valid applications that are severable from the invalid applications.

10

11 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.

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13 **NEW SECTION. Section 12. Termination.** [Sections 7(5)(b) and 8] terminate June 30, 2025.

14

- END -