



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2019 Biennium

Bill #	HB0423
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Title:	Create special needs education savings accounts
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Primary Sponsor:	Berglee, Seth
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Status:	As Introduced
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|---|--|---|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input checked="" type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>	<u>FY 2020</u> <u>Difference</u>	<u>FY 2021</u> <u>Difference</u>
Expenditures:				
General Fund	\$93,000	\$56,540	\$57,875	\$59,230
State Special Revenue	\$0	\$36,460	\$36,460	\$36,460
Private Purpose Trust Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$36,460	\$36,460	\$36,460
Private Purpose Trust Fund	\$0	\$692,740	\$692,740	\$692,740
Net Impact-General Fund Balance:	<u>(\$93,000)</u>	<u>(\$56,540)</u>	<u>(\$57,875)</u>	<u>(\$59,230)</u>

Description of fiscal impact: HB 423 establishes a Montana special needs education savings account program, establishes requirements and responsibilities, and provides an appropriation for administration of the program. If all eligible students participated in the education savings account, the program would transfer approximately \$150 million annually of state funding and local property tax dollars to the education savings account. At least 255 students would need to participate in the program in future years to generate enough funding to cover the estimated cost of operating the program. It is anticipated fewer than 100 students would participate in the education savings accounts program. The bill appropriates \$75,000 in FY 2018 and \$30,000 in FY 2019 from the state general fund. Additional state general fund support required for this program is estimated to be approximately \$22,000 in FY 2018 and \$60,000 in succeeding years.

FISCAL ANALYSIS

Assumptions:

Office of Public Instruction (OPI)

1. HB 423, Section 7(5)(a) creates a state special revenue special needs education savings account that is to be statutorily appropriated per the bill. Revenue in the account is to be 5% of the money withheld pursuant to subsection (1) of the bill to be used by OPI for administrative costs.

2. The bill allows that funding for participating students would be withheld from school district BASE Aid payments and deposited in a private purpose trust fund that has separate accounting for each participating student. These funds could then be requested to pay for educational expenses as identified in the bill for students identified in the bill.
3. HB 423 creates education savings accounts for qualified students. The definition of a “qualified student” is a student between the ages of 5 and 18 (inclusive) who was counted during the previous school year for ANB funding and is not currently enrolled in the Montana School for the Deaf and Blind, Pine Hills Youth Correctional Facility, or the Riverside Youth Correctional Facility. The student must also meet one of the following criteria:
 - a. identified as a student with a disability;
 - b. identified as having a disability under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794;
 - c. has an approved permanent placement following termination of the parent-child legal relationship pursuant to Title 41, chapter 3, part 6;
 - d. is the sibling of a current or previous recipient of funds from the Montana special needs education savings account; or
 - e. has a parent or guardian who is on active duty or who was killed in the line of duty while a member of the armed forces of the United States.
4. To determine the “district student amount,” the number of full-time pupils enrolled in the district used to determine the budget is divided into the general fund adopted budget of the prior year, as these are the students on which the budget is based. The same assumptions were made when calculating the “statewide average district student amount”. The following table shows the calculated statewide amounts.

Year	Total Statewide General Fund Adopted Budgets	Enrollment	Statewide Average District Student Amount
FY 2017	\$1,094,219,313	144,261	\$7,585
FY 2018	\$1,105,582,809	145,280	\$7,610
FY 2019	\$1,118,173,663	146,560	\$7,629
FY 2020	\$1,131,744,965	148,021	\$7,646
FY 2021	\$1,154,805,726	149,576	\$7,721

5. Based on the October 2016 official enrollment count, 17,270 students are identified as a student with disabilities attending 369 school districts.
6. Based on the October 2016 official enrollment count, 2,087 students are identified under Section 504 attending 179 school districts across the state.
7. Based on the October 2016 official enrollment count, 1,317 students have a parent or guardian who is on active duty or was killed in the line of duty while a member of the armed forces. These students attend 46 Montana public schools.
8. The Office of Public Instruction (OPI) has not accounted for the following situations set forth in HB 423:
 - a) A child who is residing with an approved permanent placement pursuant to Title 41, chapter 3, part 6.
 - b) A child who is the sibling of a current or previous recipient of funds from the special needs account.
9. It is estimated that 20,674 students will be eligible for the Montana special needs education savings account program.
10. The table below is the calculated maximum amount that could be redirected to qualified schools based on eligible students multiplied by the lessor of the statewide average district student amount or district student amount.

FY 2018	FY 2019	FY 2020	FY 2021
\$150,548,068	\$150,961,548	\$151,333,680	\$152,863,556

11. For purposes of this fiscal note, the OPI assumes there would only be administration fees and no revenue in the first year, FY 2018, of implementation of HB 423.
12. Section 7 of HB 423 requires 95% of the money be deposited in a private purpose trust fund to be used for participating students and 5% of the money be deposited in the OPI special needs education savings state special revenue account established in the bill.
13. The following table represents the amount of funding anticipated in this fiscal note that would be received in the private purpose trust fund (95%) and in the OPI special needs education savings account (5%). Calculated as an average of district student amount determined as the lessor of the statewide average district student amount or district student amount.

	FY 2018	FY 2019	FY 2020	FY 2021
Number of participants	0	100	100	100
Private Purpose (95%)	\$0	\$ 693,690	\$ 695,400	\$ 702,430
OPI Special Needs Ed Savings (5%)	\$0	\$ 36,510	\$ 36,600	\$ 36,970

14. Money deposited into a Montana special needs education savings account may be used on behalf of a student for tuition, fees, software, instructional materials, and a wide range of both curricular and extracurricular services. The account can also be used to pay tuition, books, online courses, or other fees for postsecondary institutions.
15. Education cooperative as used in HB 423 is assumed to be either a multi-district cooperative established under 20-3-363, MCA, or a full-service education cooperative established under 20-7-451, MCA.
16. For students who have not been identified as a student with disabilities, the funds from the educational savings account may not be spent on computer hardware, other technological devices, or transportation.
17. HB 423 requires that OPI develop a private purpose trust fund that has a separate accounting for each participating students. Private-purpose trust funds are used to report trust arrangements, other than pension and investment trusts, under which principal and income benefit individuals, private organizations, or other governments.
18. The OPI would use the 2017-18 school year to develop and implement the education savings account program. There are many details related to managing these savings accounts, including consumer financial protections and disclosure regulations, which need to be researched. Application processes and procedures will need to be put in place.
19. HB 423 appropriates \$75,000 to the OPI for FY 2018 and \$30,000 for FY 2019 for program administration. HB 423 allows an additional five percent allocation for administrative expenses once the savings account is established. Should the estimated 100 students participate, additional administrative allocation would amount to approximately \$36,460 per year calculated as follows: (estimated deposit per student \$7,292 X 100 students X 5%).
20. OPI expects it will need 1.00 FTE to develop and operate this program. The personal services budget for this FTE are estimated to be \$75,000 per year. The operating budget, includes indirect costs of \$14,000 and an estimated \$4,000 per year for a third party auditor. To implement HB 423, OPI would require use of existing legal and financial staff. The total cost of operating the program in the initial years will be \$93,000 annually.
21. HB 423 establishes a special needs education savings account for the OPI to cover costs associated with the implementation of the program. Five percent of the money transferred to OPI from the resident school districts will be deposited into the account.
22. OPI anticipates that fewer than 100 students would participate in the education savings account.
23. OPI projects that approximately \$7,292 each year would be deposited for each student participating in the special education savings accounts created by HB 423.
24. Under HB 423, a parent must notify the Superintendent of Public Instruction in the fall and again in the spring that their child will qualify for the education savings account. The parent signs the contract assurances listed in Section 4 of HB 423.

25. Each parent is required to submit quarterly, to the Superintendent of Public Instruction, copies of all expense receipts and account statements related to the savings account.
26. The Superintendent of Public Instruction must make information about the program available, conduct audits of accounts, remove parents who do not comply with the contract, and suspend accounts where applicable.
27. The Superintendent of Public Instruction is required to establish rules necessary for administering the program that are limited to the following:
 - a) establishment of no fewer than two time periods each year during which a student's parent may notify the superintendent of the parent's desire for the student to participate in the program. Each time period must be at least one month long. One period must be between October 1 and January 1, and the other time period must be between March 1 and June 1, based on the superintendent's determination of district and parent needs.
 - b) Verification of student eligibility pursuant to [section 2];
 - c) creation of a parent contract pursuant to [section 4];
 - d) notification of the resident school district of the student's participation in the program;
 - e) calculation of the amount of the district student amount and the statewide average district student amount;
 - f) auditing of expenditures for allowable educational services from a student's account; and
 - g) auditing of payments received by qualified schools under the program.

	<u>FY 2018</u> <u>Difference</u>	<u>FY 2019</u> <u>Difference</u>	<u>FY 2020</u> <u>Difference</u>	<u>FY 2021</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	1.00	1.00	1.00	1.00
<u>Expenditures:</u>				
Personal Services	\$75,000	\$75,000	\$76,125	\$77,267
Operating Expenses	\$18,000	\$18,000	\$18,210	\$18,423
TOTAL Expenditures	<u>\$93,000</u>	<u>\$93,000</u>	<u>\$94,335</u>	<u>\$95,690</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$18,000	\$26,540	\$57,875	\$59,230
General Fund (01) HB 423 Appropriations	\$75,000	\$30,000	\$0	\$0
State Special Revenue (02)	\$0	\$36,460	\$36,460	\$36,460
Private Purpose Trust Fund	\$0	\$0	\$0	\$0
TOTAL Funding of Exp.	<u>\$93,000</u>	<u>\$93,000</u>	<u>\$94,335</u>	<u>\$95,690</u>
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$36,460	\$36,460	\$36,460
Private Purpose Trust Fund	\$0	\$692,740	\$692,740	\$692,740
TOTAL Revenues	<u>\$0</u>	<u>\$729,200</u>	<u>\$729,200</u>	<u>\$729,200</u>
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$93,000)	(\$56,540)	(\$57,875)	(\$59,230)
State Special Revenue (02)	\$0	\$0	\$0	\$0
Private Purpose Trust Fund	\$0	\$692,740	\$692,740	\$692,740

Effect on County or Other Local Revenues or Expenditures:

1. School districts may adopt higher general fund budgets to offset the loss of funds related to this bill. In consideration of these increases and not allowing budgets to surpass the highest allowable budget, it is estimated that property taxes could increase. The property tax increase would occur the year after the initial year (FY 2020) and would be assumed at the state average rate \$7,629 X 100 or the number of estimated students. A potential overBASE property tax increase of \$762,900 in FY 2020 and 764,600 in FY 2021.
2. School districts may not be able to replace the state funds lost by this program with property tax increases. Since 90% of general fund expenditures in school districts go to teacher pay and the cost is the same with 10 or 9 students in the classroom, the program may cause a shortfall in funding for school districts.

Technical Notes:

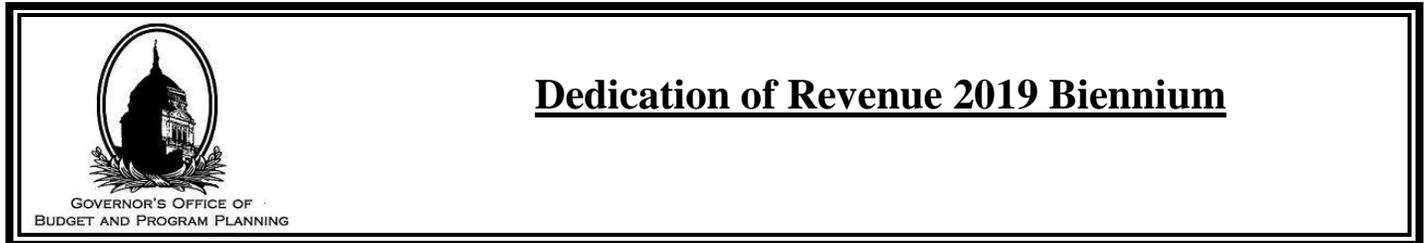
1. Article X, section 6 of the Montana Constitution prohibits aid to sectarian schools. Specifically, “The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.” It is likely that the provisions of HB 423 violate this section of the Montana Constitution.
2. The earliest that the program would become operational is the 2018-19 school year. The bill does not recognize that the details of setting up the education savings account program will take planning and development time.
3. The bill does not indicate whether the education savings accounts could be invested to earn interest.
4. HB 423 attempts to bypass the requirements of the Individuals with Disabilities (IDEA) by waiving the Free Appropriate Public Education (FAPE) requirement (page 4 section 4 (c).) but the requirement that the student continue to be enrolled in the district of residence until age 19 for ANB purposes means that the IDEA requirement for providing FAPE for all enrolled students continues. Under this circumstance the parent could take the student to a program that cannot meet the child’s needs, and then file a complaint against the school district for not ensuring that the child received FAPE.
5. Limiting the list of protected classes (“Qualified school ... does not discriminate on the basis of race, color, or national origin”) omits protections provided in the Montana Human Rights Act in 49-2-307: It is unlawful for a public or private educational institution to exclude from admission any student on the basis of “race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because or mental disability, unless based on reasonable grounds.”
6. Schools receive state special education monies to serve students in the district. If a substantial portion of these state special education monies follow students to a nonpublic school, the state could have difficulty meeting federal maintenance of effort requirements.
7. The district student amount and the statewide average district student amount are not finalized until early November. The withholdings from BASE aid payments will be estimates in August through October.

Sponsor’s Initials

Date

Budget Director’s Initials

Date

**17-1-507, MCA.**

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